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Report to Congressional Committees

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WELFARE ELIGIBILITY

Programs Treat Indian Tribal Trust Fund Payments Inconsistently

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Human Resources Division

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The Honorable Lloyd Bentsen
Chairman, Senate Committee on Finance

The Honorable Patrick J. Leahy
Chairman, Senate Committee on Agriculture,
Nutrition, and Forestry

The Honorable Daniel K. Inouye
Chairman, Senate Select Committee
on Indian Affairs

The Honorable Dan Rostenkowski
Chairman, House Committee on Ways and Means

The Honorable John D. Dingell
Chairman, House Committee on
Energy and Commerce

The Honorable E. (Kika) de la Garza
Chairman, House Committee on Agriculture

The Honorable Morris K. Udall
Chairman, House Committee on
Interior and Insular Affairs

This report responds to a directive in the Conference Report on the Consolidated Omnibus Budget Reconciliation Act of 1985 that we study payments from various funds to members of Indian tribes and organizations, and the treatment of such payments in determining federal welfare program eligibility.

We are sending copies of this report to the Senate Committees on Banking, Housing and Urban Affairs; Energy and Natural Resources; and Veterans' Affairs, as well as the House Committees on Banking, Finance and Urban Affairs and Veterans' Affairs because of their jurisdiction over certain programs included in this review. We also are sending copies to Senator Malcolm Wallop, who introduced legislation that led to this review; other interested House and Senate committees and members; the Secretaries of Agriculture, Health and Human Services, Housing and Urban Development, and the Interior; the Administrator of Veterans Affairs; the Director, Office of Management and Budget; and other interested parties.

Lawrence H. Thompson

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Executive Summary

Purpose

Members of Indian tribes can qualify for federal welfare benefits while receiving significant payments from certain tribal trust funds because federal law requires these payments to be excluded when determining welfare eligibility. Concerned about this, the Conference Committee on the Consolidated Omnibus Budget Reconciliation Act of 1985 directed GAO to

- identify the extent, size, nature, and frequency of payments from various funds to members of Indian tribes or organizations;
- determine how such payments are treated currently by various federal welfare programs; and
- report on the reasons for the legislated special exclusions of such payments.

Background

In calculating whether members of Indian tribes and organizations may be eligible for benefits from Social Security Act welfare programs, the programs should exclude from members' income and resources any funds distributed as a result of judgment awards for such past U.S. government wrongdoing as treaty breaches. This exclusion is required by the 1973 Judgment Funds Distribution Act. A 1983 amendment to the act requires a $2,000 exclusion of judgment awards and some, if not all, purchases made with such awards in determining eligibility for non-Social Security federal welfare programs. The 1983 Per Capita Distribution Act extended these exclusions to all per capita distributions to members of Indian tribes and organizations from funds held in trust by the Secretary of the Interior. Such distributions include income from the sale or lease of oil, gas, and other tribal trust assets. These laws do not specify whether the $2,000 exclusion should be applied to each payment, the annual total of payments, or cumulative payments.

GAO reviewed applicable federal laws and regulations, and federal, state, and local program eligibility policies to determine the treatment of tribal trust fund distributions, and purchases made with such distributions by six welfare programs. These programs accounted for about $36.7 billion or 50 percent of federal welfare expenditures in fiscal year 1983. Two—Aid to Families with Dependent Children (AFDC) and Supplemental Security Income (SSI)—were authorized by the Social Security Act. Also examined were Food Stamps; Pensions for Needy Veterans, their Dependents, and Survivors; the Indian housing component of Lower Income Housing Assistance; and the Bureau of Indian Affairs' (BIA) General Assistance. For eligibility purposes, all six programs limit the amount of applicants' income, and all except Indian housing limit resources.

GAO did not review individuals' case files to determine compliance with federal laws and program regulations and policies nor the extent to which Indians who received tribal trust fund distributions also received welfare.

Results in Brief

Over the 3-year period ended September 30, 1986, about 184,000 members of 55 tribes received tribal trust fund distributions totaling about $247 million. Members of 21 tribes received recurring, periodic payments, and members of 35 tribes received sporadic, often "one-time" payments. (One tribe received both types of payments.) Annual payment size varied from $12.61 to $9,000 per person. About 18,600 members of 10 tribes received distributions exceeding $2,000 per person, per year—one common interpretation of the $2,000 exclusion.

As required by law, in determining AFDC and SSI eligibility, federal program regulations and policies provide for the exclusion of all tribal trust fund distributions and purchases made with such distributions. For the four non-Social Security programs, guidance on the legislated $2,000 exclusion varies and is sometimes unclear. GAO found variation and some inconsistency with federal laws and regulations in the reported treatment of such exclusions at the local level for four programs.

GAO was unable to determine from the laws, legislative histories, or other sources, the reasons for special exclusions of tribal trust fund distributions or why such distributions are required to be treated differently by Social Security Act and other federal welfare programs.

Principal Findings

Size and Frequency of Distributions During Fiscal Years 1984-86

Of about 184,000 tribal members who received payments during fiscal years 1984-86, 74,000 were members of 21 tribes that received recurring, periodic tribal trust fund distributions totaling about $157 million. Such distributions averaged from $12.61 to $9,000 per person annually. Of about 18,600 tribal members who received over $2,000 in a single year, about 8,800 were members of four tribes that received recurring, periodic distributions.

About 109,600 members of 35 tribes received sporadic, often "one-time" distributions ranging from 62 cents to $7,700 per person, and totaling

almost $90 million. About 9,800 members of six tribes received sporadic distributions exceeding $2,000 in at least 1 year.

Distributions Treated Differently in Determining Welfare Eligibility

As required by federal law, AFDC and SSI program regulations, policies, and guidance provide for the exclusion of all such distributions and related purchases. Non-Social Security welfare program regulations, policies, and guidance vary and are sometimes unclear in interpreting the $2,000 exclusion legislated in 1983. In calculating income, for example, Food Stamps excludes $2,000 per person, per payment; Indian housing excludes $2,000 of "per capita shares," with no further elaboration. BIA's General Assistance and Pensions for Needy Veterans, Their Dependents, and Survivors program policies generally exclude judgment award distributions, but do not specifically address the $2,000 exclusion of other tribal trust fund distributions.

Contrary to federal policies, some AFDC program officials said they did not exclude all tribal trust fund distributions and related purchases. Also, for example, some General Assistance program officials reported excluding all tribal trust distributions; some, $2,000 per person, per payment; some, $2,000 per person, per year; and some, only judgment award distributions. GAO found variations in the Veterans Administration's pension and the Food Stamp programs.

Special Exclusions of Distributions by Welfare Programs Unexplained

Neither the Judgment Funds Distribution Act, the 1983 amendments to that act, the Per Capita Distribution Act, nor their legislative histories explain why tribal trust fund distributions and related purchases are excluded in determining welfare program eligibility, or why the law treats such distributions and purchases differently under Social Security Act programs than under other welfare programs. Similarly, in its review of program laws, regulations, and policies, GAO found no explanation for the special exclusions nor reason for the differing treatment by Social Security Act and other welfare programs.

Recommendations

GAO recommends that the Congress clarify the $2,000 exclusion required by the Judgment Funds Distribution Act, as amended, including specifying whether it should apply to single, annual, cumulative, or other time-phased payments. The Congress also may want to consider the appropriateness of requiring tribal trust fund distributions and purchases to be treated differently under Social Security Act programs than under other federal welfare programs.

GAO recommends that the Secretaries of Agriculture, Housing and Urban Development, and the Interior and the Administrator of Veterans Affairs review program regulations and policies to ensure consistent treatment of tribal trust fund distributions and related purchases within each welfare program at all organizational levels. Also, these officials and the Secretary of Health and Human Services should establish procedures to implement the programs consistently at all organizational levels.

Agency Comments

The Department of Agriculture said it is committed to increased conformity among programs. The Department of Health and Human Services (HHS) said its quality control program should identify state practices that are inconsistent with AFDC policy, which excludes all tribal trust fund distributions. HHS noted that a survey of quality control results in the regions GAO reviewed did not indicate states failed to exclude judgment award income. However, HHS did not state whether it found that local AFDC offices excluded tribal trust fund distributions other than judgment awards and related purchases. The Department of Housing and Urban Development, concurring with GAO's recommendations, said it would work with the other agencies to develop uniform procedures, after the Congress acts to clarify the law. The Department of the Interior generally agreed with GAO's recommendations, saying that the Secretaries should work cooperatively to clarify regulations and guidance to ensure uniformity. Interior suggested that GAO more accurately describe the General Assistance program and better differentiate between the types of per capita payments. The Veterans Administration agreed with GAO's recommendation to clarify program regulations and guidance, but disagreed with the recommendation to establish procedures to ensure local program compliance, noting that GAO's limited work on the veterans' pension program did not justify such action. GAO disagrees.

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Abbreviations

AFDC	Aid to Families with Dependent Children
ANCSA	Alaska Native Claims Settlement Act
BIA	Bureau of Indian Affairs
FNS	Food and Nutrition Service
GA	General Assistance
GAO	General Accounting Office
HHS	Department of Health and Human Services
HUD	Department of Housing and Urban Development
SSI	Supplemental Security Income
VA	Veterans Administration

Chapter 1

Introduction

When an individual applies for benefits under a federal welfare program, some income and resources are disregarded or excluded in determining eligibility. For members of Indian tribes and other organizations seeking such benefits, certain cash distributions based on their tribal membership and purchases made with such distributions should be excluded from income and resources in determining eligibility, in addition to exclusions applicable to all applicants. Questions have arisen in the Congress as to the extent of such distributions and how they are treated in determining welfare program eligibility.

Background

Federal welfare programs usually limit the amount of income and resources applicants may have to qualify for benefits. Some income and resources are disregarded (excluded) within federally prescribed limits when determining welfare applicants' eligibility for benefits. For example, in determining 1986 Supplemental Security Income (SSI) benefits for an individual applicant, the program essentially disregards the first $20 of any monthly income and the first $65 of monthly earned income, plus one-half of the remaining earned income. Similarly, an SSI applicant in 1986 generally could not have resources valued at more than $1,700, excluding the home, an automobile (valued up to $4,500), and household goods and personal effects (valued up to $2,000). The federal Lower Income Housing Assistance program imposes limits on income, but not resources. Generally, program eligibility requirements are set forth in program laws, regulations, policies, and other guidance.

In addition, federal law requires that certain cash distributions to members of Indian tribes and such other Indian organizations as pueblos[1] be excluded in calculating income and resources for determining welfare program eligibility. Also, some, if not all, purchases made with such distributions should be excluded. The excludable distributions include those made from

- judgment awards[2] in settlement of tribal claims against the U.S. government for such past wrongdoings as breaches of treaties or the wrongful taking of tribal lands[3] and

[1] A pueblo is a communal Indian village in the southwest United States.

[2] Including interest and other investment income earned while held in trust.

[3] Judgment awards also may be made to descendants of tribes that were wronged in the past. Such beneficiaries may be members of other tribes, through marriage or other means.

- other funds held[4] in trust by the Secretary of the Interior, e.g., income resulting from the sale or lease of such tribal trust assets as oil, gas, and grazing land.

The distribution of funds may be made for the tribes by the Department of the Interior's Bureau of Indian Affairs (BIA) or by the tribes themselves, after Interior gives them the money. Also, tribes may elect to use such funds to pay for tribal programs, invest them, or use them for other purposes.[4]

In October 1987, there were 509 federally recognized tribes, Alaska Native groups, and other Indian organizations in the United States.[5] BIA administers about 1,800 tribal trust fund accounts for these tribes. Tribes may have one account for each judgment award, one account for interest or other investment income for each judgment award, and one account for all other tribal trust income. Although account values fluctuate, at the end of April 1987 the accounts were worth about $1.2 billion.

Between 1973 and 1983, the Congress enacted various laws affecting the treatment by welfare programs of such funds distributed to Indian tribal members.

- The Act of October 19, 1973 (Public Law 93-134), commonly known as the Judgment Funds Distributions Act, required that judgment awards distributed to members of Indian tribes not be considered income or resources in determining recipients' eligibility for benefits under programs authorized by the Social Security Act.
- The 1983 amendments (Public Law 97-458) to the Judgment Funds Distribution Act mandated that such distributions, except for per capita shares in excess of $2,000, not be considered income or resources for any other federal welfare program. The amendments also require some, if not all, purchases made with judgment awards to be excluded.
- Public Law 98-64, commonly known as the Per Capita Distribution Act, also passed in 1983, extended the exclusions to distributions made to tribal members from any funds held in trust for a tribe by the Secretary of the Interior.

[4]Tribes also distribute nontrust funds, which are not excludable in determining tribal members' eligibility for federal welfare programs.

[5]Referred to in this report as tribes.

None of these laws specifies whether the $2,000 exclusion applies (1) to single, annual, cumulative, or other time-phased payments or (2) separately to distributions made from judgment awards and distributions made from other funds held in trust by the Secretary of the Interior. (In ch. 3, we discuss different interpretations of the law regarding excludable distributions and purchases).

Objectives, Scope, and Methodology

Out of concern that some Indians might qualify for welfare assistance while receiving significant amounts of tribal trust fund distributions, Senator Malcolm A. Wallop of Wyoming proposed to further amend the law to limit excludable distributions to $2,000 per family, per year, in determining eligibility for all welfare programs. Lacking information on which to evaluate such action, the Conference Committee Report on the Consolidated Omnibus Budget Reconciliation Act of 1985 (House Report 99-453) directed us to gather information on

- the extent, size, nature, and frequency of tribal trust payments from various funds to Indians that are based on their status as members of Indian tribes;
- how such payments are treated under current law for purposes of determining eligibility for federal welfare programs; and
- why any such payments are excluded in determining eligibility for federal welfare programs for members of Indian tribes.

To identify the extent, size, nature, and frequency of tribal trust fund distributions, we collected distribution data for fiscal years 1984-86 from BIA's Central Office in Washington, D.C., and its Finance Center in Albuquerque, New Mexico; its 12 area (regional) offices; and 27 of its 83 agency (local) offices. We obtained data on distributions made to members of all but one federally recognized tribe identified by BIA as receiving distributions. BIA could not supply the distribution data for the Jicarilla Apache Tribe of Dulce, New Mexico, which makes its own distributions, and the tribal president would not provide the data for the period covered by our review.

To obtain first-hand knowledge on how the tribal trust fund distribution process works, we visited BIA's Billings, Montana, Area Office, which serves Wyoming and Montana, and the following tribes:

- Wyoming's Arapahoe and Shoshone tribes and Montana's Crow tribe, which made recurring, periodic tribal trust fund distributions during the period of review, and

- Montana's Northern Cheyenne Tribe, which made no distributions during the period.

In addition, we spoke with officials of two tribes that made their own distributions and the Navajo Tribe, located primarily in Arizona—the most populous tribe in the United States. At the tribal level, we discussed tribal trust fund distribution policy and experience with program and other officials.

To put the size and extent of tribal trust fund distributions in perspective, we used as a frame of reference distributions totaling $2,000 per person, per year. This is a common interpretation by welfare program officials of the basis for exclusion of tribal funds for non-Social Security Act welfare programs. (Other bases will be discussed in ch. 3.)

To identify how tribal trust fund distributions are treated in determining Indians' eligibility for welfare programs, we reviewed applicable federal laws and regulations, and federal, state, and local program policies for six federal welfare programs. The programs (and the agencies that administer them) are:

- Aid to Families with Dependent Children (AFDC) (Department of Health and Human Services [HHS])—Provides grants to states by which cash payments are made directly to needy families with dependent children to cover the cost of items of daily living recognized as necessary by each state (authorized by title IV-A of the Social Security Act, as amended).
- SSI (HHS)—Provides income assistance to persons who are age 65 or older, blind, or disabled, and whose income and resources are below specified levels (authorized by title XVI of the Social Security Act, as amended).
- Food Stamp Program (Department of Agriculture)—Provides coupons to needy families to buy food (authorized by the Food Stamp Act of 1977, as amended).
- Pensions for Needy Veterans, Their Dependents, and Survivors (Veterans Administration [VA])—Provides pensions to assist needy wartime veterans whom VA has determined to be totally and permanently disabled from nonservice causes or who are age 65 or older. Pensions are also provided to needy surviving spouses and children of deceased wartime veterans whose deaths were not due to military service (authorized by 38 U.S.C. 501).
- Lower Income Housing Assistance Program (Department of Housing and Urban Development [HUD])—Provides and operates decent, safe, and

sanitary dwellings for low-income households (authorized by the Housing Act of 1937, as amended). (We focused on the Indian housing component, which serves members of eligible Indian tribes and Alaska Native Villages.)

- General Assistance (GA) (BIA)—Provides assistance to needy Indians living on or near reservations when such assistance is not available from state or local public agencies (authorized by the Snyder Act of 1921, as amended).

The six programs accounted for some $36.7 billion, about 50 percent of federal welfare program expenditures in fiscal year 1983. Further information about each program is included in appendix I.

We discussed application of program policies with federal officials for all six programs in the federal regional offices having responsibility for Montana and Wyoming. We also spoke with officials in VA's Salt Lake City regional office, which is responsible for administering VA programs in Utah, site of the Utes of the Uintah and Ouray Reservation, whose members receive tribal trust fund distributions. We also met with or called state and local officials responsible for administering the AFDC and Food Stamp programs in eight states—Alaska, Montana, Nebraska, Oklahoma, Utah, Washington, Wisconsin, and Wyoming—and 18 counties in the eight states with Indian tribes in their service areas, particularly Indian tribes whose members received tribal trust fund distributions.

In addition, federal AFDC and SSI program eligibility regulations and policies regarding treatment of tribal trust fund distributions and purchases made with such distributions often apply to Medicaid—the largest Social Security Act welfare program. The Medicaid program, authorized by title XIX of the Social Security Act, provides funds to states for medical assistance to low-income persons who are aged, blind, disabled, members of families with dependent children, and other medically needy persons. About 75 percent of all Medicaid beneficiaries are eligible for benefits because they participate in AFDC or SSI. Generally, federal Medicaid regulations regarding treatment of tribal trust fund distributions and purchases made with such distributions are the same as those for AFDC and SSI beneficiaries, according to an HHS headquarters Medicaid eligibility official. We did not review state and local Medicaid policy or other guidance.

We did not review individual case files of persons applying for or receiving assistance to assure compliance with federal laws, regulations, and

policies. In part, this was because some program records did not indicate whether the applicants were Indians. Also, data were not readily available on the number of Indian participants in the SSI, Indian housing, and VA pension programs. Due to a lack of readily available information, we did not determine the extent to which Indians who received tribal trust fund distributions also received welfare assistance.

From AFDC, Food Stamps, and GA—the only programs of the six reviewed for which data were readily available—we collected data on Indians and Alaska Natives served during fiscal years 1984-86. According to AFDC statistics, 1.3 percent of all AFDC recipients in fiscal year 1986 were Native Americans. About 78,000 Indian and Alaska Native households participated in the Food Stamp program in July 1985—1.1 percent of all households then receiving Food Stamps. In fiscal year 1986, an average of 70,500 Indians received monthly GA benefits. Most welfare recipients on Indian reservations receive AFDC or SSI, not GA, according to BIA.

Also, we collected information on two other types of distributions made to Indians and Alaska Natives because they appeared similar in nature to tribal trust fund distributions resulting from the sale or lease of tribal trust assets:

- Distributions of monies obtained from the sale or lease of tribal mineral assets distributed by the Osage tribe of Oklahoma on the basis of the number of "headrights" (ownership shares held in tribal mineral assets) owned, and
- Dividends distributed to Alaska Native shareholders of corporations established under the Alaska Native Claims Settlement Act (ANCSA) (Public Law 92-203).

More information on these distributions is provided in appendix II.

We reviewed the legislative histories of the Judgment Funds Distribution Act, the 1983 amendments to the act, and the Per Capita Distribution Act, seeking to learn (1) the rationale for the legislatively mandated exclusion of tribal trust fund distributions in determining welfare program eligibility and (2) why Social Security Act welfare programs are directed to treat tribal trust fund distributions differently than other welfare programs. Also, we reviewed applicable federal laws, regulations, and policies for the six programs to find an explanation for the special treatment, and discussed the issue with various federal program officials.

We conducted our field work primarily between November 1986 and June 1987. Our work was done in accordance with generally accepted government auditing standards.

Chapter 2

Tribal Trust Fund Distributions During Fiscal Years 1984-86

Members of 55 tribes,[1] or about 11 percent of the 509 federally recognized tribes, received tribal trust fund distributions totaling about $247 million during fiscal years 1984-86. Of these, members of 21 tribes received recurring, periodic distributions, and members of 35 tribes received sporadic, often "one-time" distributions. The latter included one tribe that also received recurring, periodic distributions. Individual amounts, per year, varied greatly; recurring distributions averaged $12.61 to $9,000, and sporadic, $31.81 to $7,700. Members of 10 tribes received annual distributions exceeding $2,000 per person in at least 1 year between fiscal years 1984 and 1986. In most tribes, enrolled tribal members received equal distributions.

The magnitude and frequency of future distributions will depend on such factors as the availability of tribal revenue realized from the sale or lease of tribal trust assets and tribal decisions about the use of such funds.

Recurring, Periodic Distributions Received by 21 Tribes

Members of 21 tribes, representing about 74,000 persons, received recurring, periodic distributions during fiscal years 1984-86.[2] For 12 of these tribes, the money came from the sale or lease of tribal trust assets or other tribal trust funds; for 7, from judgment awards; and for 2, from both. Individual distributions averaged between $12.61 and $9,000 per year. In only four tribes, representing approximately 8,800 persons, however, did members receive recurring, periodic payments exceeding $2,000 per person, per year, during fiscal years 1984, 1985, or 1986 (see table 2.1). For these four tribes, no single distribution exceeded $2,000. All these distributions came from the sale or lease of tribal trust assets, primarily oil and gas. For the distributions received by each person, their frequency, and the average number of persons receiving them in all 21 tribes, see appendix III.

[1]Excludes Jicarilla Apache Tribe. Limited information from the tribe shows that distributions made to tribal members between March 1986 and July 1987 exceeded $2,000 per person, per year.

[2]Four tribes did not receive a distribution during all three fiscal years (see app. III).

Table 2.1: Members of Four Tribes Received Recurring Tribal Trust Fund Distributions Exceeding $2,000 Per Person, Per Year (Fiscal Years 1984-86)

Tribe	Frequency of distribution	Amount per recipient per fiscal year (average no. of recipients per distribution) FY84	FY85	FY86
Utes of the Uintah and Ouray Reservation, UT:				
Senior citizens[a]	Biweekly	$9,000 (149)	$9,000 (169)	$9,000 (175)
Others	Monthly	$4,800 (1,578)	$4,800 (1,628)	$4,800 (1,630)
Shoshone Tribe of the Wind River Reservation, WY	Monthly	$4,260 (2,369)	$3,765 (2,395)	$2,850 (2,419)
Southern Ute, CO	3 per year	$3,300 (1,037)	$3,000 (1,052)	$2,250 (1,081)
Arapahoe, WY	Monthly	$2,820 (3,539)	$2,505 (3,598)	$1,900 (3,660)

[a]Persons 50 years of age and older.

During the 3 years, there was no clear trend in per capita distribution amounts among the 21 tribes. But such amounts decreased during the period for three of the four tribes shown in table 2.1. In part, the decreasing distributions were due to weak oil and gas markets that reduced prices the tribes could get for their resources, BIA officials told us. By supplementing such revenues with other tribal trust funds, the Utes of the Uintah and Ouray Reservation maintained constant distribution levels during the period, according to the BIA Superintendent of the Uintah and Ouray Agency in Utah.

Sporadic Distributions Varied Greatly in Amount

In 35 tribes, 109,600 members received sporadic, often "one-time" distributions during fiscal years 1984-86.[3] Thirty tribes received distributions from judgment awards, and five received other tribal trust fund distributions. The distribution amounts varied widely—from 62 cents to about $7,700 per person (see table 2.2). Because tribes sometimes received more than one sporadic distribution in any one year, annual distribution amounts varied from $31.81 to $7,700 per person. About 9,800 members of six tribes received in excess of $2,000 per person, per year, for at least 1 year in fiscal years 1984-86 (see table 2.3).

[3]Five of the distributions to the 35 tribes were made to descendants of tribes that were found by the U.S. Claims Court to have been previously wronged.

Table 2.2: Sporadic Tribal Trust Fund Distributions to Members of 35 Tribes (Fiscal Years 1984-86)

Range of per recipient distribution amounts	No. of distributions[a]	Percent of total distributions
Zero-$300.00	32	52
$300.01-$600.00	7	11
$600.01-$900.00	6	10
$900.01-$1,200.00	4[b]	7
$1,200.01-$1,500.00	5	8
$1,500.01-$1,800.00	1	2
$1,800.01 and above	6	10
Total	**61**	

[a]Includes distributions made to descendants of tribes.

[b]Excludes 10 of 11 distributions to the Tohono O'odham Nation of Arizona in fiscal years 1984-86. The distributions were made to different persons—each received a $1,000 distribution when he/she became an enrolled member—according to a BIA area office official.

Table 2.3: Sporadic Tribal Trust Fund Distributions, Exceeding $2,000 Per Person, to Members of Six Tribes (Fiscal Years 1984-86)

Tribe	Date of distribution	Amount per recipient	No. of persons
Wichita, OK	June 1986	$7,740	1,442
Pribilof Islands, AK[a]	May 1984	6,500	385
Peoria of Oklahoma, OK	July 1984	3,979	2,132
Peoria Descendancy[b]	July 1985	2,820	1,115
Salt River Pima-Maricopa, AZ	Dec. 1983 & Jan. 1984	2,669	4,078
Forest Co. Potawatomi, WI	Feb. 1984	2,559	665
Total			**9,817**

[a]A judgment award.

[b]Distributed to descendants of the Peoria Tribe.

The number of sporadic distributions differed in each of the 3 years. Of the 60 distributions made during fiscal years 1984-86,[4] about 27 percent were made in 1984, 38 percent in 1985, and 35 percent in 1986. Only nine tribes received more than one distribution during the 3-year period.[5]

[4]Excludes distributions made to the Tohono O'odham Nation of Arizona (see table 2.2, fn. b). That group made four distributions in fiscal year 1984, four in 1985, and three in 1986.

[5]Excludes Tohono O'odham Nation of Arizona.

Most Distributions Made Equally to All Tribal Members

Generally, both the recurring and sporadic distributions were made in equal amounts to all enrolled members of tribes.[6] However, we found exceptions. For example, the Ute Tribe of the Uintah and Ouray Reservation, which received recurring distributions, distributed a greater amount of money to its senior citizens than to other enrolled members. Senior citizens received $9,000 per person, per year, during the period, while those under age 50 received $4,800. The Seneca Tribe of New York made distributions only to its senior citizens. The Ute Mountain Tribe of the Ute Mountain Reservation made a tribal trust fund distribution in August 1984 to members who were schoolchildren to enable them to buy clothes for school, according to the BIA Agency Superintendent for the tribe.

Various Factors Affect Future Distributions

The extent, size, nature, and frequency of future tribal trust fund distributions depend on a number of factors, including

- the availability of and markets for natural resources that Indians choose to sell/lease;
- the number and size of judgment awards already made to Indian groups and awaiting distribution;
- the number, scope, and disposition of current and future claims made by Indians against the U.S. government; and
- decisions by Indian groups about how to use monies obtained from any of these sources.

Natural resources such as oil and gas sold by the tribes are not renewable and over time will be depleted. Timber as well as oil and gas markets have been depressed for the last few years, a BIA official told us, causing Indians' income from these sources to decline.

Some judgment awards already granted await the development or implementation of a utilization plan. In the meantime, the funds are deposited in interest-bearing trust accounts held by BIA for the tribes. BIA develops utilization plans in coordination with affected tribes. If a distribution is included in the plan, a list of qualified recipients is assembled. We identified at least three distributions awaiting implementation:

[6]Tribes determine their own criteria for tribal membership according to such factors as degree of tribal blood. For example, to be eligible for membership in the Blackfeet Tribe, persons must have a minimum of one-fourth degree of Blackfeet Indian blood and be born to a blood member of the tribe.

- The Little Shell Chippewa brought a claim that was awarded in March 1980 for about $47 million and will benefit descendants of the Pembina Chippewa Tribe. A plan for its use was approved in December 1982, but the planned distribution had not taken place by February 10, 1988. The invested award was worth about $101 million as of January 31, 1988.
- The Sioux Tribe of South Dakota brought a claim that was awarded in July 1979 for almost $106 million. The value of this award was about $196 million on January 31, 1988, due to investment income earned on the award.
- The Seminole Tribes of Oklahoma and Florida were granted an award for $16 million in April 1976. It was worth about $43 million on January 31, 1988.

As of May 31, 1987, 46 claims made by Indians against the U.S. government for alleged past wrongdoings were pending before the U.S. Claims Court. New claims could be filed in the future. Such claims could result in future awards and distributions to members of the injured tribes.

How Indian groups choose to use monies from judgment awards or proceeds from the sale or lease of tribal trust assets is a major factor in determining the size, nature, extent, and frequency of future distributions. The Indian groups for whom tribal trust funds are held in trust by the Secretary of the Interior largely determine how such funds are to be used. They may be distributed to tribal members, spent on tribal programs, and/or invested. For example:

- Lease income received by the Confederated Seminole Tribe is used for tribal programs, according to the BIA Seminole Agency Superintendent in Florida.
- Revenues from a site lease for a dam must be used for a combination of distributions to tribal members and tribal programs, a tribal resolution of the Confederated Salish and Kootenai Tribes of the Flathead Reservation in Montana specifies.
- Eighty percent of the proceeds from a judgment award received by the Fort Belknap Indian Community of the Fort Belknap Reservation of Montana was distributed to tribal members, while 20 percent was invested, according to the BIA Fort Belknap Agency Superintendent. Proceeds of this investment are periodically distributed.

Welfare Programs Treat Tribal Trust Fund Distributions Differently

Among and within the six federal assistance programs, federal program regulations, policies, and other guidance governing the treatment of tribal trust fund distributions vary. Consistent with the law, federal regulations and policies for AFDC and SSI, authorized under the Social Security Act, provide for excluding all tribal trust fund distributions, including purchases made with such distributions, in determining applicants' income and resources for program eligibility. For the other four welfare programs, federal regulations and policies interpret the $2,000 exclusion of tribal trust fund distributions and related purchases differently. In some instances, local program officials reported treating tribal trust fund distributions and related purchases differently than set forth in federal program regulations and policies. Moreover, in some instances treatment may not comply with the law.

Why tribal trust fund distributions, related income, and some, if not all, purchases made with such distributions should be excluded in determining federal welfare program eligibility, or why Social Security Act welfare programs should treat such distributions and purchases differently than do other welfare programs is unclear. Neither the Judgment Funds Distribution Act, the 1983 amendments to that act, the Per Capita Distribution Act, nor their legislative histories explain this. Nor did our review of program laws, regulations, and policies reveal any explanation for the special treatment. Also, we found no substantive differences between those needs-based programs that might call for the different treatment of tribal trust fund distributions between Social Security Act and other federal welfare programs.

Legislative Requirements Interpreted and Implemented Differently

Lack of clear direction in regulations, policies, and other guidance for the federal welfare programs likely contributed to varying treatment of tribal trust fund distributions and related purchases at the local level.

Guidance Varies for Treatment of Income by Welfare Programs

Programs authorized under the Social Security Act must exclude all tribal trust fund distributions resulting from judgment awards in determining eligibility. This is mandated by the Judgment Funds Distribution Act, as amended on January 12, 1983. The act also specifies a $2,000

exclusion of distributions by other welfare programs. Specifically, section 7 of the act, as amended (25 U.S.C. 1407), provides:

"None of the funds which-

(1) are distributed per capita or held in trust pursuant to a plan approved under the provisions of this Act, or

(2) on the date of enactment of this Act [January 12, 1983] are to be distributed per capita or are held in trust pursuant to a plan approved by the Congress prior to the date of enactment of this Act, or

(3) were distributed pursuant to a plan approved by Congress after December 31, 1981 but prior to the date of enactment of this Act, and any purchases made with such funds,

including all interest and investment income accrued thereon while such funds are so held in trust, shall be subject to Federal or State income taxes, nor shall such funds nor their availability be considered as income or resources nor otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled under the Social Security Act or, except for per capita shares in excess of $2,000, any Federal or federally assisted program."

This exclusion was extended by the Per Capita Distribution Act to other funds (not from judgment awards) held in trust for Indian tribes by the Secretary of the Interior. It is unclear whether

- non-Social Security Act welfare programs should apply the $2,000 exclusion to single, annual, cumulative, or other time-phased payments[1] or
- the exclusion should be applied separately to judgment award and other tribal trust fund distributions.

Federal program regulations and policies for AFDC and SSI reiterate the requirement in the law that all tribal trust fund distributions be excluded in determining program eligibility. The other welfare programs we reviewed interpreted the $2,000 exclusion of distributions and purchases in a variety of ways (see table 3.1).

[1]Tribal trust distributions exceeding $2,000 may be excluded under program policies governing countable income and resources for all applicants.

Table 3.1: Federal Regulations and Policies of Six Welfare Programs Regarding the Effect of Tribal Trust Fund Distributions on Eligibility

Program	Income	Resouces (including purchases)
AFDC and SSI	Consistent with the law, regulations, an AFDC Action Transmittal (Dec. 1983), and an SSI Program Instruction, taken together, provide for excluding all tribal trust fund distributions.	Consistent with the law, regulations, an AFDC Action Transmittal (Dec. 1983), and an SSI Program Instruction, taken together, provide for excluding all tribal trust fund distributions and purchases.[a]
Food Stamps	Consistent with the Food Stamp Act, regulations require excluding all income excluded by other federal laws, but do not address how to apply the $2,000 exclusion of tribal trust fund distributions. A Dec. 1983 FNS memorandum to all regional administrators provides for excluding the first $2,000 per person, per payment.	Consistent with the Food Stamp Act, regulations require excluding all resources excluded by other federal laws, but do not address how to apply the $2,000 exclusion of tribal trust fund distributions or related purchases. A Dec. 1983 FNS memorandum and Jan. 1985 Dept. of Agriculture Office of General Counsel memorandum to the Director, Program Planning, Development and Support Division, FNS, provide for excluding the first $2,000 per person, per payment, or the first purchases made with funds distributed under a plan approved between specified dates.
Indian Housing	Regulations require excluding $2,000 of "per capita shares," with no elaboration. According to a HUD headquarters program official involved in establishing criteria for public housing eligibility, the $2,000 exclusion applies per person, per year. Further, when assets exceed $5,000, they are assumed to be income-producing and such income is included in eligibility determinations. In determining such net family assets, the official told us that tribal trust fund distributions up to $2,000 per person, per year, are excluded in the year received.	There are no resource limits for this program. Purchases made with tribal trust fund distributions receive no special treatment.
BIA General Assistance	Regulations require including all per capita payments not excluded by federal law, but regulations do not address how to apply the $2,000 exclusion of tribal trust fund distributions. The BIA Manual refers to the exclusion of judgment payments in general terms, but does not address the $2,000 exclusion. However, guidance provided in an interim Manual Bulletin, in effect until May 20, 1988, requires excluding judgment payments up to $2,000 per person, per payment. BIA headquarters program officials have interpreted the $2,000 exclusion differently.	Regulations require including all types of liquid assets not excluded by federal law. Neither regulations nor policies specifically address how to treat tribal trust fund distributions or related purchases. BIA headquarters program officials have interpreted the $2,000 exclusion differently, but in Oct. 1987 the Acting Director of Social Services told us distributions of $2,000 per per person, per year, including purchases up to $2,000 made with excludable distributions, should be excluded.
Pensions for Needy Veterans, Dependents, and Survivors	Regulations require including income from all sources, with certain exceptions, but do not specifically identify the $2,000 exclusion as an exception. The VA Adjudication Manual and Program Guide provide for excluding distributions from judgement awards as conversions of assets to cash, but do not address treatment of other tribal trust fund distributions. According to a June 1985 VA General Counsel Opinion (O.G.C. 3-85), income from the sale or lease of mineral assets represents a conversion of capital assets to cash, which is excludable for all program applicants.	Regulations do not specifically address the $2,000 exclusion of tribal trust fund distributions. The VA Adjudication Manual and Program Guide provide for excluding distributions from judgment awards in the year received, but do not address other tribal trust fund distributions or purchases made with distributions from judgment awards or other tribal trust funds. According to a June 1985 VA General Counsel Opinion (O.G.C. 3-85), distributions from the sale or lease of mineral assets should be included in determining resources.

[a]Regulations will be changed to exclude only the first purchase made with tribal trust fund distributions, an AFDC program official told us.

Federal Food Stamp regulations reiterate the requirement in the Food Stamp Act that all income excluded by other federal laws be excluded in determining program eligibility. However, they do not address how to apply the $2,000 exclusion. A December 1983 Food and Nutrition Service (FNS) memorandum interprets the $2,000 exclusion to apply per person, per payment.

While Indian housing regulations exclude the first $2,000 of "per capita shares," they do not explain how to apply the $2,000 exclusion. In addition, housing assistance regulations assume that net family assets—including such capital investments as real property and stock, but not personal property—with a cumulative value of at least $5,000 are income-producing. Thus, income is imputed (at the passbook savings account rate) in calculating income for program eligibility. According to the Chief of the Occupancy Branch of HUD's Office of Public and Indian Housing, which has responsibility for establishing criteria for federal public housing eligibility, the $2,000 exclusion applies per person, per year in determining income eligibility for Indian housing.

BIA's GA regulations require including all per capita payments not excluded by federal law. But they do not address how to apply the $2,000 exclusion required by the Judgment Funds Distribution Act, as amended, or the Per Capita Distribution Act. Similarly, the BIA Manual dealing with GA generally refers to the exclusion of judgment payments, without specifically addressing the $2,000 exclusion. Department of the Interior officials have interpreted the exclusion differently. Only for tribal trust fund distributions made from judgment awards is the $2,000 exclusion applied per person, per year, BIA Acting Director of Social Services said during our field work. All other distributions are counted in full, he said.

Another BIA Acting Director of Social Services told us in October 1987 that he interpreted the $2,000 exclusion to apply per person, per year, for both judgment awards and other tribal trust fund distributions. BIA's Manual was being updated, he said, to reflect this interpretation. As of February 11, 1988, the Manual had not been revised. However, an interim Manual Bulletin setting forth GA policy, in effect until May 20, 1988, presents a partial list of income disregards, including judgment awards up to $2,000 per person, per payment.

Concerning VA Pensions for Needy Veterans, Their Dependents, and Survivors, VA regulations require including income from all sources, with certain exceptions, but do not specifically identify the $2,000 as an

exception. The VA Adjudication Manual and Program Guide exclude all judgment award distributions as conversions of assets to cash, but are silent on the treatment of other tribal trust fund distributions. A June 1985 VA General Counsel opinion, however, provides that income from such mineral leases as gas and oil is treated as a conversion of capital assets to cash. Such conversions constitute excludable income under VA's general eligibility policy for all pension applicants. VA's Acting Deputy General Counsel told us that any distributions of tribal trust funds resulting from oil or gas leases thus would be excluded under this policy. In commenting on a draft of this report, the VA Administrator advised us that VA guidance is being revised to reflect such General Counsel opinions.

Local Treatment of Income Sometimes Varies From Laws and Regulations

In determining applicants' income, some local program officials reported treating tribal trust fund distributions differently than prescribed in the Judgment Funds Distribution Act, as amended, the Per Capita Distribution Act, or federal program regulations and/or policies. For example, despite federal AFDC policies requiring exclusion of all tribal trust fund distributions, an official of one Montana county social services office reported limiting the exclusion for the AFDC program to $2,000 per person, per year. Similarly, officials in a Washington county social service office told us that the AFDC program limits the exclusion of distributions from the sale or lease of tribal trust assets to $2,000 per assistance unit (parents and dependent children) per year.

Contrary to federal Food Stamp policy, which excludes $2,000 per person, per payment, one Wisconsin county social services official reported excluding all tribal trust fund distributions derived from the sale or lease of tribal trust assets in determining eligibility. Similarly, two Washington county social service offices said they excluded all tribal trust fund distributions made from judgment awards.

Also, where program regulations and/or policies were unclear, local program administrators reported applying the $2,000 exclusion differently. Regarding GA, regulations require including all per capita income not excluded by federal law, but do not specify how to treat the $2,000 exclusion in determining income. Some BIA area and agency officials reported excluding $2,000 per person, per year; some, $2,000 per person, per payment; some, all distributions from judgment awards and/or tribal trust funds; and some, no distributions from nonjudgment tribal trust funds.

Contrary to VA guidance, which, in determining all applicants' eligibility for needs-based pensions, requires excluding income from the conversion of capital assets to cash, one VA regional office told us it did not exclude Indians' tribal trust fund distributions derived from oil and gas royalties in determining income for VA pension eligibility.

For Indian housing, we identified no variations from federal regulations, as interpreted by the Chief of the Occupancy Branch of HUD's Office of Public and Indian Housing, in determining income eligibility.

Guidance Varies for Treatment of Resources by Welfare Programs

Consistent with the law, AFDC and SSI regulations and policies exclude all tribal trust fund distributions, and purchases made with such distributions, in determining the resources of individuals applying for benefits. At the time of our review, such purchases included the initial and subsequent purchases made with tribal trust fund distributions and proceeds from the sale of previous purchases. But due to the administrative difficulty of identifying all purchases for exclusion, an AFDC headquarters official told us, regulations were to be changed to exclude only the first purchases made with tribal trust fund distributions. As of October 27, 1987, the change had not been made.

Among the non-Social Security Act welfare programs, provisions for treating tribal trust fund distributions, and purchases made with such distributions, as resources vary. Consistent with the Food Stamp Act, Food Stamp regulations require excluding all resources excluded by other federal law, but do not address how to apply the $2,000 exclusion of tribal trust fund distributions and purchases. However, FNS 1983 guidance and a January 1985 Department of Agriculture General Counsel memorandum exclude $2,000 per person, per payment, of distributions, and initial purchases made with excludable distributions made in accordance with a BIA distribution plan approved after December 31, 1981, and before January 12, 1983.[2] In commenting on our draft report, FNS pointed out that, because more than one distribution may have been made during this time frame, excludable purchases could exceed $2,000. FNS also pointed out that the exclusion of purchases is applicable only to the original recipient of tribal trust funds.

[2]The limiting of excluded purchases to purchases made with funds distributed under plans that BIA approved during a certain time period is based on the Department of Agriculture's reading of paragraph (3), section 7, of the Judgment Funds Distribution Act, as amended (see page 21).

Indian housing program regulations impose no restrictions on the amount of resources an individual may possess and qualify for housing assistance. However, as previously discussed, resources are considered in calculating income.

GA regulations require that all types of liquid assets not excluded by federal law be included in determining eligibility. Neither these regulations nor GA policies specifically address treatment of tribal trust fund distributions and related purchases. BIA officials have interpreted the exclusion differently. But as of October 1987, BIA's Acting Director of Social Services told us that $2,000 per person, per year, of tribal trust fund distributions, and purchases up to $2,000 per person with excludable distributions, should be excluded as resources.

VA regulations concerning resources do not specify how to treat tribal trust fund distributions and related purchases. VA's Adjudication Manual and Program Guide exclude distributions from Indian judgment awards for the year in which received. No information is provided on treatment of other tribal trust fund distributions, such as those resulting from the sale or lease of tribal trust assets, or purchases made with judgment awards or other tribal trust fund distributions. A June 1985 VA General Counsel opinion provides that royalties from the sale or lease of such mineral resources as gas and oil be included as resources in eligibility determinations.

Local Treatment of Resources Sometimes Varies From Laws and Regulations

Local program officials reported treating tribal trust fund distributions and related purchases differently in determining resources. In some cases, such treatment was not consistent with the Judgment Funds Distribution Act, as amended, the Per Capita Distribution Act, and federal program regulations or policies. For example, consistent with the law AFDC policies exclude tribal trust fund distributions and purchases made with such distributions in determining eligibility. However, one Utah, one Wisconsin, and two Washington county social service offices that administer AFDC reported making no distinctions between purchases made with tribal trust fund distributions or with any other funds, and included such purchases as resources to the same extent as other purchases. That is, purchases made with tribal trust fund distributions received no special treatment.

Food Stamp policy requires excluding only purchases made with funds distributed under a plan approved by BIA after December 31, 1981, but before January 12, 1983. But in contrast, officials in one Wyoming and

two Oklahoma county social service offices and the Nebraska state social services' office told us they did not limit their exclusions for purchases to those made only during this time. Also, in contrast to law and program policy, one Wisconsin and two Washington county social service offices reported making no special exclusions for purchases made with tribal trust fund distributions.

Officials in the three VA regional offices contacted told us that, in calculating resources, they exclude all purchases (except unusually large ones) made by applicants, regardless of the source of income.

No Explanations for Special Treatment of Distributions

Exclusion of some or all tribal trust fund distributions, and part, if not all, related purchases in determining eligibility of members of Indian tribes for welfare programs is required by the three laws previously cited (see p. 9). But none of these three acts nor their legislative histories provide explanations for the special exclusions. Also, no explanation is provided as to why the law treats tribal trust fund distributions and related purchases differently for Social Security Act welfare programs than other federal welfare programs.

Similarly, we found no explanation in the six welfare program laws, regulations, and policies for the special Indian exclusions or the differing treatment of tribal trust fund distributions and related purchases between Social Security Act and other federal welfare programs. Moreover, program officials did not explain the different treatment by Social Security Act and other welfare programs.

The six welfare programs included in the review are needs-based; all determine eligibility for assistance on a test of the applicants' income, and five programs test assets. We could identify no substantive program differences that might cause the need for or help explain why tribal trust fund distributions and related purchases should be treated differently by Social Security welfare programs than other federal welfare programs.

Conclusions, Recommendations, and Agency Comments

Income distributed to members of Indian tribes and other organizations from judgment awards or other funds held in trust by the Secretary of the Interior, related income, and some, if not all, purchases made with such distributions, should be partly or totally excluded in determining eligibility for federal welfare programs. Under the Judgment Funds Distribution Act, as amended, and the Per Capita Distribution Act, all such tribal trust fund distributions and related purchases are excluded for Social Security Act welfare programs. These laws provide a $2,000 exclusion for all other federal welfare programs. The federal laws authorizing the exclusions do not specify whether they apply (1) to single, annual, cumulative, or other time-phased payments or (2) separately to judgment awards and other types of tribal trust fund distributions.

Consistent with the law, federal AFDC and SSI regulations and policies provide for exclusion of all tribal trust fund distributions and related purchases in determining welfare applicants' income and resources. But for the four non-Social Security welfare programs included in our review, federal regulations and policies vary, and some are unclear with respect to the treatment of such distributions and purchases:

- Food Stamp regulations do not specifically address the $2,000 exclusion of tribal trust fund distributions or related purchases, but program policies generally exclude $2,000 per person, per payment, in calculating applicants' income and resources.
- Indian housing regulations exclude $2,000 in "per capita shares" in calculating income for eligibility purposes, but do not explain whether to apply the exclusion to individual, annual, cumulative, or other time-phased payments. A HUD headquarters official interpreted the regulations to exclude $2,000 per person, per year. There are no resource restrictions for Indian housing.
- BIA's GA regulations require including all per capita income not excluded by other federal law, but do not specifically address the $2,000 exclusion for tribal trust fund distributions. Program policy only generally addresses the treatment of judgment awards in calculating applicants' income, without specifically addressing the $2,000 exclusion or how to treat income from other tribal trust fund distributions. Regarding resource calculations, regulations require that only resources specifically excluded by federal law be excluded, but neither program regulations nor policies specifically address how to treat judgment awards or other per capita trust fund distributions. BIA officials interpret the exclusion for resources differently. However, a BIA official told us BIA's policy manual was being revised to exclude $2,000 of judgment awards

or other tribal trust fund distributions in determining income. An interim Manual Bulletin directs that in calculating income, judgment awards up to $2,000 per person, per payment, be excluded.

- VA regulations for Pensions for Needy Veterans, Their Dependents, and Survivors do not address tribal trust fund distributions. VA program policies exclude all judgment awards as conversions of capital assets to cash in determining income, and all judgment awards in the year received in determining resources, but do not address the treatment of other tribal trust fund distributions or purchases. In accordance with a VA General Counsel opinion, distributions from the sale or lease of mineral assets should be excluded from income determinations as conversions of capital assets to cash for all program applicants, but included in resource determinations. According to the Administrator, VA policy is being revised to reflect this General Counsel opinion.

Some local AFDC program administrators reportedly did not exclude all tribal trust fund distributions and related purchases, contrary to the Judgment Funds Distribution Act, as amended, the Per Capita Distribution Act, and federal program regulations and policies. At various sites we visited, non-Social Security Act welfare programs treated tribal trust fund distributions and related purchases differently than set forth in program regulations and policies. This was due in part to the lack of specificity in these laws and to unclear program regulations and policies.

During fiscal years 1984-86, about 184,000 Indian tribal members received tribal trust fund distributions. About 18,600 received distributions exceeding $2,000 per person, per year—one of several interpretations of the exclusion for non-Social Security Act welfare programs. Distributions ranged from $12.61 to $9,000 per person annually.

The Judgment Funds Distribution Act, the 1983 amendments to that act, the Per Capita Distribution Act, and their legislative histories provide no explanation as to why tribal trust fund distributions to members of Indian tribes, or purchases made with such distributions, are required to be excluded in determining welfare program eligibility. Moreover, these sources provide no reason for the law to treat such distributions and purchases differently under Social Security Act welfare programs than under other federal welfare programs. Likewise, we could find no explanation for this in the authorizing legislation or applicable regulations and policies for the six welfare programs included in this review. Nor could we otherwise identify a reason for the differing treatment of distributions and related purchases by Social Security Act welfare programs and other federal welfare programs.

Recommendations

We recommend that the Congress further amend the Judgment Funds Distribution Act to clarify how the $2,000 exclusion should be applied by specifying whether it should be limited to single, annual, cumulative, or other time-phased payments. In clarifying this law, the Congress may want to consider whether it is appropriate to require excluding all tribal trust fund distributions and related purchases in determining eligibility for Social Security Act welfare programs, while specifying a $2,000 exclusion for non-Social Security Act programs. In considering these matters, the Congress should consider the impact on Indians—the more stringent the limitations, the less benefit to tribal members—in conjunction with the equity of treatment of other individuals in need of federal welfare assistance.

We recommend that the Secretaries of Agriculture, HUD, and the Interior and the Administrator of Veterans Affairs clarify program regulations, policies, and other guidance so that tribal trust fund distributions and related purchases are treated consistently within their respective programs. Also, these officials and the Secretary of HHS should establish procedures to ensure that local programs comply with federal program regulations and policies.

Agency Comments

Agriculture's FNS, in addition to providing technical comments, said it is committed to working toward increased conformity among programs. FNS said discussions in 1984 with HHS and Interior aimed at achieving more consistent treatment of tribal trust fund distributions were unsuccessful, given the agencies' respective legislative constraints and program considerations. Its policy is articulated in a reasonable manner, FNS said, and state and local compliance with that policy is generally monitored through its quality control system. Also, FNS said immediate action would be taken if it identifies noncompliance, but did not describe how it would address reported deviations from Food Stamp policies discussed on pages 24 and 27.

HHS said its current AFDC policy of excluding all judgment award and other tribal trust fund distributions in determining applicant eligibility will be reinforced by proposed regulations, planned for publication this summer. The new rules also will provide policy for excluding ANCSA payments as required by recent legislation (see app. II). States must implement all mandatory provisions, including the policy excluding tribal trust fund distributions, HHS pointed out. States' program implementation, HHS stated, is monitored through existing quality control procedures. Noting that quality control review would identify states' failure

to exclude judgment award income, HHS said its survey of the regions we included in our review indicated compliance with policies on treatment of Indians' judgment award income. However, our report identifies instances of local AFDC offices limiting the exclusion of tribal trust fund distributions other than judgment awards (p. 24) and providing no special exclusion for purchases made with tribal trust fund distributions (p. 26).

HUD, recognizing that there have been varying interpretations of the exclusion of tribal trust fund distributions in determining applicants' income for the Indian housing program, concurred with our recommendations. HUD said that, after the Congress acted on our congressional recommendation to clarify the law, HUD would take steps to develop uniform implementation procedures.

Interior generally agreed with our recommendations, noting that if the recommendations are implemented, existing federal law would be clarified and federal welfare program services could be provided more equitably and uniformly. Interior said it believed that (1) the report did not contain a completely accurate assessment of BIA's GA program regulations, and (2) more information may be needed to differentiate among types of per capita payments. These matters were discussed in more detail in BIA comments that Interior provided.

BIA agreed with our recommendation that federal agencies clarify program regulations and other guidance to ensure consistent treatment of tribal trust fund distributions and related purchases and to establish procedures to ensure compliance with such guidance. BIA also suggested the Secretaries work cooperatively to clarify such regulations and guidance to ensure equity. To the extent possible, BIA noted, there should be equity among Indian recipients of various programs. Further, BIA noted that parity between AFDC and GA would assure that basic needs of recipients in similar circumstances be met on an equal basis. Therefore, BIA said it would support federal legislation that would seek uniformity among providers.

While BIA agreed that the Congress should clarify the Judgment Funds Distribution Act, as amended, it said per capita payments should not be indiscriminately grouped together with no distinction regarding the source of funds. We believe we adequately distinguish between per capita distributions made from judgment awards and those made from other funds held in trust by the Secretary of the Interior. We also note

that some per capita distributions by tribes are not excludable in determining welfare eligibility.

BIA also said it is revising its Social Services Manual to adopt policy to guarantee uniform application of the "$2,000 limitation" it says is imposed by the Judgment Funds Distribution Act, as amended. BIA acknowledged that the limitation is inconsistently applied, and noted that, in seeking clarification on the issue from Interior's General Counsel, BIA was informed that this is a "gray area" of the law and subject to interpretation. We commend BIA for its efforts to more consistently implement tribal trust fund distribution policy. At the same time, however, we note that BIA policy implementing GA should reflect the intent of the Judgment Funds Distribution Act, as amended, to allow at least a $2,000 exclusion.

To answer our questions about why tribal trust fund distributions and related purchases receive special treatment, BIA suggested that we look at our observation that exclusions result from past U.S. government wrongdoings. BIA noted that judgment awards do not always fully compensate for land and resources denied Indians, and suggests the exclusions are extensions of the awards. We found no support for this position in our review of the applicable legislative histories. Nor does this justification account for exclusions of distributions from other funds held in trust by the Secretary of the Interior.

Also, BIA said our assessment of the GA program was not completely accurate and suggested some technical changes. We have incorporated such changes where appropriate.

VA agreed with our recommendation regarding clarifying program regulations and guidance, noting that steps have already been taken to review income computation guidance. The revised guidance will reflect the VA General Counsel opinion discussed on page 24. However, VA called the scope of our work and findings with respect to its operations too limited to warrant special procedures for monitoring this small element of its program. Program implementation, VA said, is reviewed regularly by its quality control program. VA's revised guidance, coupled with its quality control program, may be adequate to ensure local compliance. However, VA should ensure compliance by its Salt Lake City regional office, where we were told that trust fund distributions from oil and gas royalties were not excluded in determining program eligibility.

Also, VA said it was incorrect to characterize the nonservice-connected pension program as welfare. It stated that the VA pension was an earned benefit, noting eligibility is based on the veteran's wartime service. Whether VA's pension program is a welfare program is debatable. However, for purposes of this review, we believe it is appropriate to include it in that general category with other programs that require income to be below prescribed limits. That is, all six programs are needs-based.

Descriptions of Six Federally Funded Welfare Programs Included in GAO Review

This appendix describes the six federally funded assistance programs we reviewed as they are promulgated by federal program laws and regulations, unless otherwise noted. The program listings, which include general information on legislative authority, eligibility requirements, benefits, funding arrangements, and expenditures and workload, are arranged in descending order by fiscal year 1986 expenditures.

Food Stamps

The Food Stamp Program, administered by the Department of Agriculture, is designed to improve the nutrition of low-income households by increasing their food-purchasing power through the provision of coupons to buy food.

Authority

The Food Stamp Program, initially established by the Food Stamp Act of 1964 (Public Law 88-525), has been revised several times, including substantial revision by the Food Stamp Act of 1977 (Public Law 95-113, Title XIII).

Eligibility Requirements

Food Stamp eligibility is based primarily on financial need. Households—individuals who purchase food and prepare meals together, but separately from others in a residential unit—must meet federally prescribed income and resource program criteria. Food Stamp eligibility criteria consider both gross and countable monthly income. Gross income includes all cash income of a household except energy assistance; student aid used for tuition, mandatory fees, and other miscellaneous personal expenses; and certain other income disregarded by such other federal laws as the Judgment Funds Distribution Act, as amended, and the Per Capita Distribution Act. As of June 1986, countable income for households excluded from monthly gross income the following: $98 standard deduction; 20 percent of earned income; up to $160 for work- and training-related expenses for the care of dependents; shelter expenses over 50 percent of the countable income, up to $147 (no limit for households with elderly or disabled members); and medical expenses over $35 for elderly or disabled persons. The limits on countable income varied by household size, from $438 per month for 1 person, to $1,488 per month for 8 persons plus $150 per month for each additional person. Households that do not qualify automatically because all members are AFDC and SSI recipients may not have liquid assets exceeding $2,000 ($3,000 for households with an elderly member); excluded are the residence, part of the value of motor vehicles, business assets, household

belongings, and certain other resources.[1] In addition, able-bodied persons, with some exceptions, must register for work and accept suitable employment if offered.

Benefits

Food coupons are provided to eligible households according to countable income and the applicable "thrifty food plan"—the cost of food required to feed a family of four, adjusted for household size. Food Stamp coupons must be used in authorized retail food and other stores to buy food products intended for human consumption. In fiscal year 1986, the average monthly Food Stamp benefit was about $45 per person.

Funding Arrangements

The federal government pays 100 percent of all Food Stamp benefit costs and 50 percent of most eligible administrative costs (some administrative costs are covered at 75 percent).

Expenditures/Workload

Fiscal year 1986 obligations were $10.6 billion. Participation per month averaged 19.9 million persons during fiscal year 1986.

Aid to Families With Dependent Children

Administered by HHS, AFDC is a formula grant program through which cash payments are made directly to needy families with dependent children to cover costs for food, shelter, clothing, and other items of daily living recognized as necessary by each state. It is administered by each state in accordance with plans approved by HHS.

Authority

Title IV-A of the Social Security Act, as amended, authorizes AFDC.

Eligibility Requirements

AFDC assistance is provided to needy children, generally under 18, deprived of support because of a parent's continued absence from home, incapacity, death, or (at state option) unemployment of the principal wage earner. States define families' need standards and establish income and resource requirements within federal program limits. Currently, a family's gross income may not exceed 185 percent of the state-

[1]House of Representatives, Committee on Ways and Means, Background Material and Data on Programs Within the Jurisdiction of the Committee on Ways and Means, Committee Print 99-14, 1986 ed.

established need standard. Benefits reflect the difference between the state-established payment standard (up to 100 percent of the need standard) and countable income. Countable income is gross income including the earned income tax credit when received. Deducted are such federally prescribed disregards as the first $50 of monthly child support, up to $75 per month for full- or part-time work expenses, up to $160 per month per child for child care, $30 plus one-third of the balance of monthly earned income for up to 4 months, and $30 of monthly earned income for up to an additional 8 months beyond the initial 4-month period. Resources are limited to $1,000 per family, excluding a home, an automobile (with an equity value up to $1,500), burial plots and funeral agreements up to $1,500 per person and, at state option, such day-to-day living items as clothing and furniture. Indian tribal trust fund distributions and purchases made with such funds are excluded as both income and resources.

Benefits

Cash payments generally are provided directly to families. Benefit amounts vary by state. In 1986, the average monthly benefit per family was $352, or $120 per person.

Funding Arrangements

States may request federal reimbursement using a prescribed formula or the federal financial participation rates for Medicaid. Currently, each state uses its Medicaid rate, which may range from 50 to 83 percent, depending on per capita income.

Expenditures/Workload

Fiscal year 1986 obligations totaled $9.7 billion. In fiscal year 1986, approximately 11 million persons on average received maintenance assistance through this program each month.

Supplemental Security Income

SSI is a federally funded program administered by HHS through which income assistance is provided to persons who are age 65 or older or who are blind or disabled, and whose income and resources are below specified levels. Cash payments are made directly to program participants.

Authority

Title XVI of the Social Security Act, as amended, authorizes SSI.

Eligibility Requirements

Program eligibility is based on federally established physical and financial criteria. To qualify, a person must be at least 65 years of age, blind (as defined under this program), or disabled (unable to engage in gainful activity due to a medically determined physical or mental impairment that is expected to result in death or that has lasted or is expected to last continuously for 12 months). The amount of income and resources one may have and be eligible for SSI benefits depends upon the person's marital status and type of income, as well as living arrangements. SSI benefit standards are established by the federal government. For 1986, the standard was $336 a month for an individual and $504 a month for a couple. Also, some states supplement federal SSI. The combined federal and state standards are offset by countable income to determine eligibility and benefit amounts. Countable income is gross income less such disregards as $20 of monthly income from virtually all sources except needs-based income, the first $65 of monthly earned income plus one-half of the remaining earnings, $20 of unearned income and $10 of earned income received irregularly, and certain work- or impairment-related expenses for blind and disabled individuals. Additionally, benefits are reduced by one-third for recipients living with and receiving support from another person's household. Recipients in Medicaid-supported institutions may receive no more than $25 per month. Tribal trust fund distributions are also excluded.

The federal government also sets the limits on the amount of resources an individual or couple may possess and still qualify for SSI; $1,700 and $2,550, respectively, for 1986. For eligibility purposes, assets exclude the home, an automobile (full value if used for medical treatment or employment; up to $4,500 of market value otherwise); up to $2,000 equity value of household goods; $1,500 burial space or funds per person; and assets, tools, and other property essential to self-support of the blind and disabled. In addition, tribal trust distributions are excluded.

Benefits

Eligible individuals receive monthly cash payments. In fiscal year 1986, the average benefit was $213 per month.

Funding Arrangements

SSI is 100-percent federally funded.

Expenditures/Workload

Fiscal year 1986 obligations totaled $9.4 billion. In fiscal year 1986, 4.2 million persons received benefits under this program.

Pensions for Needy Veterans, Their Dependents, and Survivors

Administered by VA, Pensions for Needy Veterans, Their Dependents, and Survivors are provided to assist wartime veterans and surviving spouses and children who meet certain income and other criteria.

Authority

Pensions for Needy Veterans, Their Dependents, and Survivors are authorized under 38 U.S.C. 501.

Eligibility Requirements

Generally, pensions are available to certain needy veterans whose countable income does not exceed income limitations and who do not have estates that can provide adequate maintenance. Also, they must have had 90 days or more active service in the Armed Forces, have been discharged under other-than-dishonorable conditions, and be permanently and totally disabled for reasons not necessarily due to service or be 65 years of age or older. The amount of the pension is based on the type of pension received—"Improved," "Section 306," or "Old Law"—which is generally determined by the date the applicant originally applied for benefits.[2] The annual payment under the Improved program is reduced by countable income of the veteran and, if applicable, a spouse and dependent children. Under the Old Law and Section 306 programs, the countable income cannot exceed specified income limitations.

In determining a veteran's income, VA includes income from all sources except that specifically excluded by law and regulations, such as the value of maintenance furnished by a relative, friend, or charitable organization and proceeds from the sale of mineral rights (as a conversion of capital assets to cash). In determining whether some part of a claimant's estate (excluding such things as a home, automobile, and personal effects) should be used for his or her maintenance, consideration is given to such factors as the amount of the claimant's income, whether the property is readily convertible to cash at no substantial sacrifice, the claimant's life expectancy, and the number of dependents.

Pensions are also available to unmarried surviving spouses and children of deceased veterans who had at least 90 days of other-than-

[2]Persons receiving Old Law or Section 306 pensions can convert to the Improved Pension program if it is to their financial advantage.

dishonorable active wartime service. These pensions are also income-tested and reduced by the amount of the annual countable income of the surviving spouse or dependent children.

Benefits

Average monthly benefits for veterans in fiscal year 1986 were approximately as follows: $416 under the Improved Pension program, $135 under the Section 306 pension program, and $78 under the Old Law pension program. For survivors, the fiscal year 1986 monthly averages were approximately $303 under the Improved Pension program, about $77 under Section 306 pensions, and about $54 under the Old Law pension program.

Funding Arrangements

VA pensions are 100-percent federally financed.

Expenditures/Workload

Needy Veterans pension obligations for fiscal year 1986 equaled $2.5 billion. During fiscal year 1986, approximately 673,000 veterans received pensions.

Needy Spouses and Dependents pensions obligations for fiscal year 1986 were about $1.3 billion. In fiscal year 1986, approximately 712,000 survivors received pensions.

Indian Housing Program

The Indian housing component of the Lower Income Housing Assistance Program, administered by HUD, provides and operates decent, safe, and sanitary dwellings for low- and very low-income members of eligible Indian tribes and Alaska Native villages. Indian Housing Authorities administer HUD homeownership and/or rental housing programs in Indian communities.

Authority

The U.S. Housing Act of 1937, as amended, authorizes the Indian housing program.

Eligibility Requirements

Very low-income families—those whose annual income does not exceed 50 percent of the median income for an area—and lower-income families—those whose annual income does not exceed 80 percent of the

median income for an area—may qualify for the program. In determining income, income from all sources is included unless temporary, nonrecurring, or sporadic, or specifically excluded by law or regulation. There are no asset limitations. But where a family's net assets, excluding such items as furniture and a car, exceed $5,000, annual income includes the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by HUD.

Benefits

The program provides two forms of housing assistance. Under the first, assistance on a lease-purchase basis enables ownership of homes that Indian Housing Authorities acquire by new construction, rehabilitation, or purchase on the open market. Home ownership requires a family to provide a down payment and demonstrate the ability to adequately maintain the home. HUD also provides funding to housing authorities for rehabilitation of housing and insurance. Additionally, the Indian housing program owns and operates rental housing units for lower-income families. Indian Housing Authorities assess ownership fees or rents based on tenants' family income.

Funding Arrangements

HUD provides monies to buy, build, and/or rehabilitate housing units for program participants and subsidies to support Indian Housing Authorities' operations to make up the difference between family payments and operating costs.

Expenditures/Workload

Fiscal year 1987 budget authority totaled approximately $430 million. In November 1987, Indians and Alaska Natives occupied over 60,000 lease-purchase homes and rental housing units.

BIA General Assistance

BIA General Assistance, under the Department of the Interior, provides assistance to needy Indians living on or near reservations when such assistance is not available from state or local public agencies.

Authority

The program is authorized under the Snyder Act of 1921 (Public Law 67-85).

Eligibility

Eligible individuals include Indians deemed needy by state AFDC standards who are not enrolled in other federally aided cash welfare programs. In determining eligibility and the amount of assistance payments, BIA subtracts applicants' resources from the assistance standard. In determining applicants' resources, BIA includes all income except that specifically excluded by federal law or GA regulations. BIA includes earned income and such unearned income as interest, oil, gas, and other mineral royalties, and per capita payments not excluded by federal law. It disregards from gross earned income such items as federal, state, and local taxes, Social Security, and health insurance. From income and other liquid assets the program excludes such items as the first $1,000 of liquid resources and resources specifically excluded by federal law. To qualify, recipients must accept available employment they are able and qualified to perform.

Benefits

The program provides cash payments, usually monthly, to eligible persons and families to meet daily living needs (such as food, clothing, and shelter).

Funding Arrangements

This program is 100-percent federally financed.

Expenditures/Workload

Fiscal year 1986 obligations totaled $66.6 million. BIA GA was provided to a monthly average of 70,500 persons in fiscal year 1986.

Osage Headright and Alaska Native Corporation Dividend Distributions

Osage headright distributions and the Alaska Native Claims Settlement Act corporation dividend distributions are somewhat similar in nature to distributions discussed in chapters 2 and 3 of this report. However, Osage headright distributions are included in determining welfare eligibility, as are portions of ANCSA dividends by some welfare programs.

Osage Headright Distributions

In 1906, the Congress allotted the land that the Osage Indian tribe occupied to individual members of the tribe and apportioned to each living member one headright, or equal share, in the revenues that might be generated from the sale of subsurface minerals.[1] These minerals were reserved and held in trust for the benefit of the tribe as a whole. By means of a census of the tribe taken at that time, the number of headrights was fixed at 2,229. As a result of inheritances, we were told, many persons now own only a fractional share of one headright. The 2,229 headright shares are distributed among approximately 4,100 individuals, the Superintendent of the Osage Agency told us.

Osage headright distributions are issued quarterly. Total distributions per headright were $23,800, $19,995, and $12,700 for calendar years 1984, 1985, and 1986, respectively.

These distributions are not subject to the Judgment Funds Distribution Act, as amended, or the Per Capita Distribution Act—they do not result from a judgment award nor are they distributed on a per capita basis. Headright payments are included in determining eligibility for BIA GA, according to the Superintendent, Field Solicitor, and Director of Social Services of the BIA Osage Agency Office. Also, headright payments are included when eligibility for such federally funded welfare programs as AFDC and Food Stamps is determined, the Director of Social Services of the BIA Osage Agency Office, officials of Osage County Social Services, and an official in the Oklahoma Department of Human Services told us.

ANCSA Dividend Payments

The 13 regional and 249 village Alaska Native corporations established under ANCSA may make dividend payments to their shareholders from earned surplus or, if none, net profits for the fiscal year in which the dividend is declared. Such monies may derive from the sale or lease of mineral assets. Shareholders are Native Alaskans who, at the time the

[1] The Osage Indians are located in the state of Oklahoma.

corporations were established, chose to enroll in the village corporation and/or the regional corporation serving their area of residence.[2]

Due to a lack of readily available information on dividend distributions made by ANCSA corporations, we did not determine dividend frequency or size. However, our survey of village and regional corporations conducted during December 1982 and January 1983 found that on average about 20 percent of the 129 village corporations[3] responding to our questionnaire and almost 44 percent of the 13 regional corporations paid dividends to shareholders in fiscal years 1980, 1981, and 1982.

Like the Osage headright distributions, ANCSA corporation dividends are not subject to the Judgment Funds Distribution Act, as amended, nor the Per Capita Distribution Act. The original ANCSA did not address clearly how dividends paid to native shareholders were to be treated in determining eligibility for assistance programs. In 1976, in an effort to clarify this, an amendment to ANCSA was enacted (Public Law 94-204). It provided that

"(a) The payments and grants authorized under this Act constitute compensation for the extinguishment of claims to land, and shall not be deemed to substitute for any governmental programs otherwise available to the Native people of Alaska as citizens of the United States and the State of Alaska.

"(b) Notwithstanding section 5(a) and any other provision of the Food Stamp Act of 1964 (78 Stat. 703), as amended, in determining the eligibility of any household to participate in the food stamp program, any compensation, remuneration, revenue, or other benefit received by any member of such household under the Settlement Act shall be disregarded." (Public Law 94-204, Sec. 29; 1976.)

Uncertainty as to how to treat benefits received under ANCSA in determining eligibility for assistance programs remained after passage of this amendment.

During our field work, AFDC regulations and program guidance included dividend payments in determining program eligibility and benefits to the extent such payments were taxable. BIA GA[4] program guidance required

[2]Native Alaskans not residing in Alaska had the opportunity to enroll in a nonland-based regional corporation set up for their benefit.

[3]At the time the survey was conducted (Dec. 1982), there were 174 village corporations.

[4]While BIA does not provide GA in Alaska, it may have to factor such distributions into GA eligibility determinations in cases of Alaska Natives living in the continental United States who apply for GA in an area in which program benefits are provided.

that the taxable portion of dividend payments made under ANCSA be included in determining an applicant's income for eligibility purposes; resource determinations were not addressed. We were told by various program officials that nontaxable portions of dividends represented portions of natives' original awards included in ANCSA and as such should be at least partially excluded, while the taxable portions of the dividends represented income realized on settlement funds.

Like AFDC, SSI regulations and program guidance directed that taxable portions of dividends be included in determining program eligibility. However, SSI officials told us that the Per Capita Distribution Act (1983) may have required that SSI exclude the taxable portions of payments as well. Thus, in December 1983 SSI directed district, branch, and other organizational units to exclude all ANCSA dividend distributions in determining applicants' eligibility until the agency completed examining this possibility.[5] Both SSI and AFDC regulations are being reviewed to determine whether any changes are required in view of recent legislation (discussed below), and to achieve consistency between the two programs.

Food Stamp regulations exclude dividend distributions in general terms. During the time period for which we collected information, dividend distributions were included in determining program eligibility to the extent taxable, as indicated by the Alaska Food Stamp Manual and by state program officials. However, in May 1987 the Department of Agriculture's Office of General Counsel concluded that dividends, even if taxable, should be excluded from eligibility determinations. In response, Food Stamp officials in Alaska reportedly began to exclude all dividend distributions in determining program eligibility.

Pursuant to the 1976 amendment to ANCSA, HUD's regulations call for excluding dividend payments. This policy excludes the entire dividend payments in determining program eligibility, a HUD eligibility policy official told us. VA's regulations and program guides do not specifically address the issue of how to treat ANCSA corporation dividend distributions.

Assistance program officials rely on the ANCSA corporations to identify whether or not dividend distributions are taxable. This can be difficult to determine at the time a dividend distribution is made, we were told,

[5]SSI eligibility determination technicians have been instructed to document the receipt of dividend payments, in case benefit calculations have to be amended to conform with revised regulations.

as native corporations can take certain retroactive losses that may change the tax status of a particular distribution after benefit determinations are made. In response to such changes, public assistance officials must reevaluate all the cases determined on the basis of the original statement of whether a distribution is taxable.

On February 3, 1988, the Alaska Native Claims Settlement Act Amendments of 1987 were enacted (Public Law 100-241), clearing up the question of how ANCSA dividends should be treated in determining eligibility for federal needs-based programs. According to the amendments, ANCSA corporate dividend payments are to be excluded in determining income or resources to the extent that they do not exceed $2,000 per individual, per year.

Recurring Tribal Trust Distributions During Fiscal Years 1984-86 (In Descending Order of 3-Year Total Amounts of Distributions)

		Distributions						Total 3-year distributions	
		FY 1984		FY 1985		FY 1986			
Tribe/state	Frequency	Amount	No. of persons	Amount	No. of persons	Amount	No. of persons	Amount[a]	Average no. of persons/ year
Utes of Ft. Duchesne, UT—senior citizens	2x/month	$9,000	149	$9,000	169	$9,000	175	$27,000	164
Utes of Ft. Duchesne, UT—nonsenior citizens	Monthly	4,800	1,578	4,800	1,628	4,800	1,630	14,400	1,612
Shoshone, WY	Monthly	4,260	2,369	3,765	2,395	2,850	2,419	10,875	2,394
Southern Ute, CO	3x/year	3,300	1,037	3,000	1,052	2,250	1,081	8,550	1,057
Arapahoe, WY	Monthly	2,820	3,539	2,505	3,598	1,900	3,660	7,225	3,599
Skull Valley Goshutes, UT	Yearly	1,334	87	2,000	95	2,000	96	5,334	92
Confederated Tribes of Warm Springs, OR	Monthly	900	2,300	900	2,300	1,125	2,300	2,925	2,300
Passamaquoddy, ME—senior citizens	Quarterly	923	41	970	43	757	44	2,650	42
Yakima, WA	3-5x/year	750	7,104	1,030	7,207	700	7,376	2,480	7,221
Confederated Tribes of the Goshute Reservation, NV	Yearly	730	370	766	372	513	370	2,009	370
Penobscot, ME—senior citizens	Quarterly	220	119	853	124	771	133	1,844	127
Mescalero, NM	Varying intervals	727	2,570	700	2,750	300	2,800	1,727	2,706
Confederated Salish and Kootenai, MT	2x/year	200	6,085	500	6,196	1,000	6,278	1,700	6,186
Penobscot, ME—nonsenior citizens	Quarterly	145	1,730	773	1,761	656	1,808	1,575	1,778
Colvilles, WA	2x/year	600	6,636	500	6,678	400	6,771	1,500	6,695
Assiniboine and Sioux, MT	Yearly	250	8,393	365	8,362	150	8,517	765	8,424
Seneca, NY—senior citizens	Quarterly	179	413	270	412	205	425	654	417
Taos Pueblo, NM	[b]	0	0	0	0	577	1,843	577	1,843
Assiniboine, MT	Yearly	0	0	434	1,854	89	1,869	524	1,861
Gros Ventre, MT	Yearly	0	0	348	2,563	106	2,576	453	2,569
Crow, MT	3x/year	122	7,143	133	7,342	91	7,515	346	7,333
Blackfeet, MT	Yearly	45	12,498	55	12,692	52	12,904	152	12,698
Pawnee, OK	Yearly	0	0	13	2,368	12	2,388	25	2,378

[a]Yearly amounts may not add to 3-year totals due to rounding.

[b]We were told that tribal members expect a distribution once every 3 years. However, if at that time the tribe determines that available funds are not sufficient to make a distribution, it may not be made.

Comments From the Department of Agriculture

United States
Department of
Agriculture

Food and
Nutrition
Service

3101 Park Center Drive
Alexandria, VA 22302

FEB 04 1988

Mr. J. Dexter Peach
Assistant Comptroller General
Resources, Community, and
Economic Development Division
U. S. General Accounting Office
Washington, D. C. 20548

Dear Mr. Peach:

We have reviewed the December 18, 1987 draft report entitled, "Welfare Eligibility: Indian Tribal Trust Fund Payments Treated Inconsistently by Programs." The report concludes that a lack of legislative specificity and unclear program regulations and policy guidance contribute to differential treatment of tribal trust fund distributions in determining eligibility for several welfare programs.

The Food and Nutrition Service (FNS) is committed to working toward increased conformity among programs. In 1984, with the assistance of the Department of Agriculture's Office of General Counsel, FNS engaged in discussions with the Departments of Health and Human Services and Interior to achieve more consistent treatment of tribal trust fund payments. Given our respective legislative constraints and program considerations, we were unable to achieve the desired consistency among programs.

Based on the legislation, we believe that our policy was articulated in a reasonable manner. State and local compliance with this policy is monitored, for the most part, through the quality control system. We will take immediate action if we become aware of noncompliance in this area.

Enclosed are page-specific comments on this report for your consideration in preparing the final report. Thank you for giving us the opportunity to comment.

Sincerely,

Anna Kondratas

ANNA KONDRATAS
Administrator

Enclosure

ENCLOSURE

Comments on Draft GAO Report Entitled, "Indian Tribal Trust Fund Payments Treated Inconsistently by Programs"

Now on p. 11.

Page 18 Summary of Food Stamp Program - The program is currently authorized by the Food Stamp Act of 1977, as amended.

Now on p. 22.

Page 34 First Paragraph - Program regulations contain a general requirement that income or resources specifically excluded by another Federal law are excluded for the purpose of determining eligibility for food stamps. See 7 CFR 273.8(e)(11) and 7 CFR 273.9(c)(10). This should also be reflected on Table 3.1.

Now on p. 25.

Page 36 Last Paragraph - Statement of Food Stamp Program policy on the treatment of purchases made with tribal trust fund payments is not correct. Purchases of $2,000 or less which are made solely with funds which were distributed, pursuant to a plan approved by Congress, after December 31, 1981, but prior to January 12, 1983, are totally excluded from resources for food stamp purposes based on this law.

This applies to all types of vehicles as well as other property. The value of property which was bought and only partially paid for by excluded funds is excluded to the extent that excluded funds received from payments made after December 31, 1981, but prior to January 12, 1983, were used to make the purchases. More than one per capita payment may have been made during this time and used to make the purchase so the excluded amount may be more than $2,000 depending on the number and amount of the payments. If the property has depreciated in value, the current amount to be excluded based on this public law must be determined based on a proportionate share. The percentage that the original excluded amount was to the original purchase price must be computed. The percentage must then be applied to the current fair market value. Purchases other than those specified in this paragraph are not excluded by this public law. "Purchases" refers to the initial purchases only. It does not apply to subsequent purchases, e.g., trading in a car bought with exempt funds. Further, exempt property is only exempt as long as it is held by the person who originally received the per capita payment with which it was purchased.

Now on p. 27.

Page 38 Last Paragraph - The exact nature of the policy variances found in "one Wisconsin and two Washington county social service offices" is not clear. In using the term "other funds," is GAO indicating that purchases made with tribal trust fund payments are treated like any other purchase in accordance with general program rules, or does the term "other funds" refer to non per capita tribal trust fund distributions?

Now on p. 27.

Page 39 Second Paragraph - Background to provide insight on food stamp policies is embodied in the January 31, 1985 OGC opinion which is referenced on Table 3.1 of the report.

Now on p. 34.

Page 43 Last Paragraph - We suggest the following language "student aid used for tuition, mandatory fees and other miscellaneous personal expenses."

Now on p. 34.

Page 44 Discussion of Eligibility Requirement - On line 8, strike "families with." Line 14 should read "households with an elderly member); ..."

Now on p. 44.

Page 60 First Paragraph - We disagree with the statement that the May 1987 OGC opinion was "based principally on the 1976 amendment to ANCSA." The opinion reflects a consideration of legislative histories of the Food Stamp Act, amendments to ANCSA and related committee reports, and previous litigation and the related permanent injunction which bars this Agency from counting benefits issued under the ANCSA as income or resources.

Comments From Department of Health and Human Services

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General

Washington, D.C. 20201

MAR 4 1988

Mr. Lawrence H. Thompson
Assistant Comptroller General
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Thompson:

Enclosed are the Department's comments on your draft report, "Welfare Eligibility: Indian Tribal Trust Fund Payments Treated Inconsistently by Programs." The enclosed comments represent the tentative position of the Department and are subject to reevaluation when the final version of this report is received.

The Department appreciates the opportunity to comment on this draft report before its publication.

Sincerely yours,

Richard P. Kusserow
Inspector General

Enclosure

COMMENTS OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES ON THE U.S. GENERAL ACCOUNTING OFFICE'S DRAFT REPORT: "WELFARE ELIGIBILITY: INDIAN TRIBAL TRUST FUND PAYMENTS TREATED INCONSISTENTLY BY PROGRAMS"

General Comments

The following comments address GAO's recommendation with respect to the finding that some local AFDC agencies treat tribal trust fund distributions and related purchases inconsistently with applicable law, Federal regulations, and/or policy.

The draft report offers a useful summarization of Indian tribal trust fund payment practices among the various tribes that make such payments and presents an accurate description of HHS policies on the treatment of these payments.

The GAO mandate was apparently limited by the Conference Committee to a study of tribal trust fund payments. We believe, however, that the report would be more helpful if it clarified that trust fund payments constitute one aspect of various provisions stemming from the myriad congressional efforts to compensate Indians and Native Alaskans for past abuses. Even though any rationalization of Federal program policy on tribal trust fund payments would be a step in the right direction, we would prefer to see all comparable Indian entitlements (such as, in addition to tribal trust fund payments, judgement fund payments, conveyances of land and mineral rights, and investment income) addressed at once in a comprehensive fashion.

Now on p. 30.

GAO Recommendation (page 42)

That the HHS Secretary establish procedures for the AFDC program to ensure that local program administrators comply with federal regulations and federal program policies.

Department Comments

Action Transmittal SSA-AT-83-27, issued December 5, 1983 requires States to exclude from income and resources any trust funds distributed under The Judgment Funds Distribution Act, as amended (P.L. 97-458) and The Per Capita Distributions Act (P.L. 98-64).

We plan to reinforce this policy by updating Federal Aid to Families With Dependent Children (AFDC) regulations to include these two statutory exclusions. The proposed regulations, which we expect to publish by early summer, will also include any exclusions required under the Alaska Native Claims Settlement Act Amendments of 1987 (HR 278) when that bill is enacted.

The Division of Quality Control in the Office of Family Assistance provides Family Support Administration data relating to the accuracy with which States implement AFDC regulations. The Quality Control (QC) basis for judging the correctness of eligibility and payment amount is permissible State practice (PSP). Regulations at 45 CFR 205.40 define PSP to mean State plan whenever written procedures differ from the plan. Therefore, if State practice is inconsistent with the State plan provision, the review is conducted and the State plan is used as the standard. States are required to implement all mandatory provisions including those issued through action transmittals. Monitoring of State implementation of Federal regulations occurs through Federal re-review of subsample cases.

Regulations at 45 CFR 205.40(b)(1)(iv) require States to take appropriate corrective action on improperly authorized or denied assistance and on the causes of these improper actions.

The 1986 "Characteristics and Financial Circumstances of AFDC Recipients" report compiled from the National Integrated Quality Control System's monthly sample cases indicates that, nationally, 1.3 percent of AFDC recipients are Native Americans with the highest concentrations in South Dakota (46.2%), Alaska (41.9%), North Dakota (32.7%), Arizona (23.6%), Montana (22.3%), and New Mexico (18.0%). These figures, however, do not show the number of Indian cases which have Judgment Funds income. Our survey of the regions from which GAO selected its sample States indicates consistency in the Federal review of subsample Indian cases with Judgment Funds income. Federal quality control will exclude income from this source in determining eligibility of an Indian tribe applicant/recipient, and would cite a difference if a State failed to do so.

Comments From the Department of Housing and Urban Development

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410

OFFICE OF THE ASSISTANT SECRETARY
FOR PUBLIC AND INDIAN HOUSING

JAN 22 1988

Mr. J. Dexter Peach
Assistant Comptroller General
United States General Accounting Office
Washington, DC 20548

Dear Mr. Peach:

The Department of Housing and Urban Development has reviewed the GAO draft report entitled, "Welfare Eligibility: Indian Tribal Trust Fund Payments Treated Inconsistently by Programs" (GAO/HRD-88-38) on tribal trust distributions as income for means-tested programs. The Department recognizes that there have been varying interpretations on the amount of income from judgment awards or other funds held in trust by the Secretary of the Interior that is exempt from the definition of tenant income for the Indian housing program.

Now on p. 30.

The draft report, at page 42, makes two explicit recommendations: First, that the Congress clarify its policy as to the specific exemptions and protections intended by amending the Judgement Funds Distribution Act; and, next, that the administering Agencies develop uniform and consistent implementing procedures.

We concur in your recommendations. Once the Congress has acted on your initial recommendation for clarification, by legislation or by other instruction, we would be happy to confer with the other Executive Branch Agencies in developing uniform implementation procedures.

Sincerely yours,

James E. Baugh, Ph.D.
General Deputy Assistant Secretary

Comments From the Department of the Interior

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

JAN 15 1988

Mr. J. Dexter Peach
Director, Resources, Community and
Economic Development Division
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Peach:

The Department of the Interior offers the enclosed general comments in response to the General Accounting Office's draft report entitled "Welfare Eligibility: Indian Tribal Trust Fund Payments Treated Inconsistently by Programs."

We generally agree with the two recommendations to the Secretary. However, we do not feel that the draft GAO report contains a completely accurate assessment of the regulations that govern the Bureau of Indian Affairs (BIA) General Assistance program. We also believe that more details may be needed to differentiate among the various types of per capita payments that are made to members of Indian tribes.

If implemented, GAO's recommendations will clarify an existing statute and enable the various federally assisted welfare programs to provide their services in a more equitable and uniform manner. Thank you for the opportunity to comment on this draft report.

Sincerely,

Ralph R. Reed

Assistant Secretary - Indian Affairs

Enclosure

BUREAU OF INDIAN AFFAIRS RESPONSE TO
GAO DRAFT AUDIT ON WELFARE ELIGIBILITY

The Bureau of Indian Affairs is pleased to respond to the GAO Draft Report entitled "Welfare Eligibility: Indian Tribal Trust Fund Payments Treated Inconsistently by Programs." We have found the Draft Report to be comprehensive and generally accurate in its treatment of the essential issues. We do, however, wish to have the following comments considered by GAO prior to the issuance of a final report.

Now on p. 41.

Relative to BIA General Assistance, we find the Draft Report to contain several minor technical inaccuracies. For instance, the description of "eligibility" on page 54 provides only an abbreviated list of resources that are considered when eligibility for assistance is determined. The complete list of countable resources contains information we believe to be pertinent, given the overall purpose of the GAO review. The General Assistance regulations, at 25 CFR 20.21(f)(2), stipulate that: "Unearned income includes, but is not limited to: income from interest; oil and gas and other mineral royalties; rental property; cash contributions such as child support and alimony; retirement, disability and unemployment benefits; per capita payments not excluded by Federal statute; sale of trust land and real or personal property. . .; and Federal and State tax refunds. All of the above shall be counted to the extent they are not disregarded by Federal statute." Moreover, 25 CFR 20.21(g)(2)(iii) provides that only resources specifically excluded by Federal statute are to be disregarded when eligibility determinations are made. (Emphasis added.)

Now on pp. 4 and 28.

On pages 6 and 40 references are made to the use of the term "judgment award" in General Assistance regulations; moreover, the statement is made that the regulations do not address ". . . the treatment of tribal trust fund distributions other than from judgment awards." We wish to emphasize that, contrary to such language in the Draft Report, the term "judgment award" is to be found nowhere in the General Assistance regulations. Throughout 25 CFR 20, the generic, all-inclusive term "per capita payment" has been employed. Therefore, we maintain that the regulations do, in fact, address the treatment of all tribal trust fund distributions. Also in error is the statement that the regulations do not deal with the treatment of lease income. Provisions at 25 CFR 20.21(f)(3) identify lease income as intermittent, unearned income which is not to be disregarded.

It is correct that BIA regulations do not specifically address the $2,000 limitation imposed by the Judgment Funds Distribution Act, as amended. We believe, however, that the regulations cited above adequately provide for the $2000 limitation by requiring that all income not specifically excluded or disregarded by Federal statute must be considered as available to meet need when eligibility for General Assistance is determined. We acknowledge that the $2,000 limitation is inconsistently applied by the Bureau. In

seeking clarification on this issue from the Department of the Interior's Office of the Solicitor, we have been informed that it is indeed a "gray area" of the law and therefore subject to interpretation. In the revision of 66 BIAM (the Bureau's Social Services manual) which is presently being drafted in final form, policy is being adopted to guarantee uniform application of the $2,000 limitation.

In passing, we make note of the numerous statements in the Draft Report calling attention to GAO's inability to locate in legislative histories or other relevant literature explanations of why tribal trust distributions are excluded when determinations are made of Indians' eligibility for public welfare programs. We would suggest that the GAO investigators look no further than their own statement of findings in the Judgment Funds Distribution Act -- i.e., that the exclusions result from, " . . . such past U.S. Government wrongdoings as (for example) breaches of treaty provisions."

We do not believe that the Draft Report adequately defines or otherwise differentiates among the various types of per capita payments made to members of Indian tribes. Per capitas are principally derived from two sources: 1) Judgment awards which are sometimes conferred as restitution for broken treaties, the expropriation of tribal homelands by the Federal Government, etc.; and 2) revenues from tribally owned income-producing resources or enterprises. Some sources of per capita payments, especially those originating as judgment awards, have been declared tax-exempt, and have long been disregarded as income by certain federally assisted programs.

In the overwhelming majority of judgment awards (compensation for past wrongs) the dollar value of the award does not approach the actual value of lands and/or resources that were denied to Indian tribes. Other losses have been of types for which monetary values simply cannot be assigned. In a sense, the disregard of judgment income is an extension of the award itself, a concept which the Congress and the courts have repeatedly implemented and upheld. In the view of many (and most especially of Indian tribes), the issues here involved are of a moral rather than a fiscal nature.

The Bureau's position regarding the provision of General Assistance is that, insofar as possible, payment equity should exist among Indian recipients of the various federally assisted public welfare programs. In all instances, BIA General Assistance is provided at payment levels identical to applicable state Aid to Families with Dependent Children (AFDC) standards. It should be noted that the majority of public welfare recipients on Indian reservations receive assistance not from BIA, but from programs funded under the Social Security Act (AFDC and SSI).

The maintenance of parity between AFDC and Bureau GA assures that the basic needs of all welfare assistance recipients sharing similar circumstances are met on an equal basis in any given locale. Therefore, the Bureau of Indian Affairs would consider supporting proposed Federal legislation that seeks to establish uniformity among all providers of federally assisted welfare programs relative to the treatment of per capita payments to Indians. We would hope that any such legislation would apply to all relevant programs so that equity of payment levels could be maintained.

RECOMMENDATIONS

I. GAO recommends that the Congress amend the Judgment Funds Distribution Act, as amended, to clarify how the $2,000 exclusion should be applied by specifying whether it should be limited to single, annual, cumulative, or other time-phased payments. In clarifying the legislation, the Congress may want to consider the appropriateness of applying a limit to non-Social Security Act programs while excluding all tribal trust fund distributions and purchases in determining eligibility for Social Security Act programs. In considering these matters, the Congress should consider the impact on Indians -- the more stringent the limitations, the less benefit to Indians -- in conjunction with the equity of treatment of other individuals in need of federal welfare assistance.

BIA Response: The Bureau agrees that the 1983 amendments to the Judgment Fund Distribution Act should be clarified. We maintain, however, that per capita payments per se should not be indiscriminately grouped together with no distinction being made regarding the actual source of the payment funds.

II. GAO recommends that the Secretaries of the departments of Agriculture, Housing and Urban Development, and the Interior, and the Administrator of Veterans Affairs clarify their program regulations and other guidance so that tribal trust distributions and related purchases are treated consistently within their programs. These officials and the Secretary of Health and Human Services (for the AFDC program) also should establish procedures to ensure local program administrators comply with federal regulations and federal program policies.

BIA Response: The Bureau agrees, and further recommends that the Secretaries work cooperatively to clarify their respective program regulations and guidelines to ensure equity -- particularly in the income maintenance programs (the departments of the Interior and Health and Human Services).

We appreciate the opportunity to respond to GAO's Draft Report. Please contact us if you should require additional information, or any clarification of the comments provided above.

Comments From the Veterans Administration

Office of the
Administrator
of Veterans Affairs

Washington DC 20420

Veterans
Administration

FEB - 3 1988

Mr. Richard L. Fogel
Assistant Comptroller General
Human Resources Division
U.S. General Accounting Office
Washington, DC 20538

Dear Mr. Fogel:

This responds to your request that the Veterans Administration (VA) review and comment on the General Accounting Office (GAO) December 18, 1987, draft report WELFARE ELIGIBILITY: Indian Tribal Trust Fund Payments Treated Inconsistently by Programs.

The GAO found variances in the Federal, state, and local program regulations and policies regarding the treatment of tribal trust fund distributions and related purchases made with these funds for six welfare programs. GAO concluded that the inconsistent treatment of these distributions results from governing statutory language that is not specific and from unclear program guidance issued by the administering agencies. Accordingly, the report contains a recommendation that the Congress amend the Judgment Funds Distribution Act, as amended, to clarify the legislation.

GAO also recommends that the Secretaries of the Departments of Agriculture, Housing and Urban Development, and the Interior, and the Administrator of Veterans Affairs clarify their program regulations and other guidance so that tribal trust distributions and related purchases are treated consistently within their programs. These officials and the Secretary of Health and Human Services (for the AFDC program) also should establish procedures to ensure that local program administrators comply with Federal regulations and Federal program policies.

We concur in the first part of the recommendation regarding clarifying program regulations and other guidance. We were already in the process of reviewing Agency guidance dealing with income computations before receiving the draft report. Our revised program guidance will state VA's position regarding payments covered by our General Counsel's opinions.

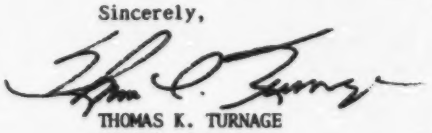
We do not concur with the second part of the recommendation. In view of the limited sample of VA regional offices GAO used and the finding that one regional office was not following written policy, we do not believe that establishing special procedures to monitor this very small element of the VA pension program is warranted. The VA does have a quality control program that regularly reviews the implementation of all instructions.

2.

Mr. Richard L. Fogel

The enclosure contains comments on portions of the report text. We would appreciate your considering these comments when preparing the final report.

Sincerely,



THOMAS K. TURNAGE
Administrator

Enclosure

Enclosure

VETERANS ADMINISTRATION RESPONSE TO THE
DECEMBER 18, 1987, GENERAL ACCOUNTING OFFICE DRAFT REPORT
WELFARE ELIGIBILITY: INDIAN TRIBAL TRUST FUND
PAYMENTS TREATED INCONSISTENTLY BY PROGRAMS

Following are comments on portions of the draft report text:

It is incorrect to characterize the VA pension program as a "welfare" program. The nonservice-connected pension program is based on a veteran's wartime service to this Nation. The possibility exists that had this wartime service not occurred, the veteran or the suvivors might not be facing financial hardship. VA pension is an earned benefit and, as such, should be distinguished from the general welfare programs mentioned in your report.

The general description of the VA pension program in the body of the report and in Appendix I omits a provision of the law which is very important to the understanding of this issue. Subsection 503(a) of title 38, United States Code, states, in effect, that unless a type of income is specifically excluded by this section, the income is countable for pension purposes. To date, payments to Indians have been considered on a case-by-case basis with due consideration to the guidance provided by our General Counsel's opinions. Final decisions are governed by whether the income in question fits into one of the categories of exclusions. The sale of mineral rights, for example, falls into the income exclusion provided in 38 USC 503(a)(6). The law sets forth rules regarding the computation of income under the pension program. These rules are applicable to all beneficiaries and to all types of income.

Now on pp. 22 and 26.

Table 3.1 and page 38 contain references to advice informally provided GAO by a member of VA's General Counsel staff. The Acting Deputy Assistant General Counsel is said to have explained the holding of a 1985 General Counsel opinion to the effect that mineral lease royalties are to be considered proceeds from the sale of property and hence excludable from income for pension purposes. The information provided was accurate; however, we believe the GAO report should refer to the primary source, General Counsel's Opinion, Veterans Administration - Op. G.C. 3-85, a copy of which is attached.

GENERAL COUNSEL'S OPINION, VETERANS ADMINISTRATION-Op. G.C. 3-85

June 19, 1985 (Opinion date)

September 16, 1985 (Publication date)

SUBJECT: Review of Opinions Concerning Mineral Lease Proceeds

QUESTION PRESENTED: Whether royalty and other payments associated with a mineral lease represent income of the lessor for pension purposes.

COMMENTS: The VA District Counsel in Waco, Texas, has issued two opinions, dated March 23, 1978, concerning "section 306 pension", and April 26, 1985, concerning "improved pension", advising that royalty payments from mineral leases represent proceeds from the sale of property and as such are properly excludable from income for pension purposes. This office reached the same conclusion in two unpublished opinions dated July 27, 1984, to the Chief Benefits Director, and June 5, 1963, to the Chairman, Board of Veterans Appeals.

Section 503(a) of U.S. Code title 38 lists several exceptions to the general rule that, in determining annual income for pension purposes, all payments of any kind, from any source, shall be included. Among the items excepted is "profit realized from the disposition of real or personal property other than in the course of a business." 38 U.S.C. § 503(a)(6). An identical provision applicable to section 306 pension was found at 38 U.S.C. § 503(a)(10). This exception is incorporated in regulations implementing the improved pension and section 306 pension programs at 38 C.F.R. § 3.272(e) and 38 C.F.R. § 3.262(k)(5), respectively. Improved and section 306 pension regulations specifically include income from real or personal property owned by the claimant as income for pension purposes. 38 C.F.R. §§ 3.271(d) and 3.262(k)(2). Due to the similarity of the income-computation provisions applicable to improved and section 306 pension, these rules are interpreted and applied in the same manner under both programs. Transmittal Sheet 655, July 27, 1979.

In assessing the nature of mineral leases for purposes of the income-computation provisions, we observe that such leases have been the subject of divergent opinions among the state courts. *See J.M. Huber Corp. v. Denman*, 367 F.2d 104, 114 fn. 31 (5th Cir. 1966). Courts in Texas and other states consider an oil and gas lease a sale of an interest in land. *E.g., Cherokee Water Co. v. Forderhause*, 641 S.W.2d 522, 525 (Tex. 1982); *Martin v. Humble Oil and Refining Co.*, 199 F. Supp. 648, 652 (S.D. Miss. 1960), *aff'd*, 298 F.2d 163 (5th Cir. 1961), *cert. denied*, 371 U.S. 825 (1962). Under this view, the lease vests the lessee with title to oil and gas in place. *Cherokee*, 641 S.W.2d at 525. Other state courts have found an oil and gas lease does not operate as a conveyance of property, but merely as a grant of a license or right to search for and reduce to possession such oil and gas as may be found by the lessee. *E.g., Hinds v. Phillips Petroleum Co.*, 591 P.2d 697, 698 (Okla. 1979); *Reese Enterprises, Inc. v. Lawson*, 220 Kan. 300, 553 P.2d 885, 895 (1976).

It has long been held that the income provisions of the veterans' pension statutes are to be applied uniformly to similarly situated veterans without regard to differences in state law which, if applied, would lead to inequitable results. 41 Op. Att'y Gen. 370 (1985); Op. Sol. 591-48. Thus, rather than viewing state mineral law principles as controlling, we must interpret the statutory income exclusion so as to give effect to Congress' intention and purpose, directing our attention to the economic consequences of the transactions in question. *See United Gas Improvement Co. v. Continental Oil Co.*, 381 U.S. 392, 400-01 (1965); *Burnet v. Harmel*, 287 U.S. 103, 108, 110-11 (1932); *Mobil Oil Corp. v. Federal Power Commission*, 463 F.2d 256, 259, 261-62 (D.C. Cir. 1971), *cert. denied*, 406 U.S. 976 (1972).

The sale-of-property exception was added to the pension statutes by Pub. L. No. 88-664, § 1(b), 78 Stat. 1094 (1964). The Chairman of the House Committee on Veterans' Affairs (HCVA), discussing the exception in a letter dated August 18, 1964, to the Chairman of the Senate Committee on Finance, explained that the sale of property, except in the course of business, does not truly constitute income but merely an exchange of an asset from one form to another. *See also* Transmittal Sheet 331, November 4, 1964. Senator Keating described the exception as permitting a veteran to make necessary sales without fear of jeopardizing family income as a result of the income limitations. 110 Cong. Rec. 20,881 (1964). Clearly, the sale-of-property exclusion was a liberalizing provision intended to increase claimants' flexibility in disposition of assets by recognizing that conversion of assets to a more liquid form does not change the nature of the assets from corpus to income.

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A mineral interest in property represents an asset of the holder, regardless of whether the holder is considered to possess title to minerals present on the property. Under the usual mineral lease agreement, royalties from the lease are based directly on the amount of oil and gas produced. No royalties are payable prior to commencement of production, and no royalties are paid if no minerals are found and removed. Oil and gas reserves and other minerals in place are considered "wasting assets". *Anderson v. Helvering*, 310 U.S. 404, 407 (1940). Since these substances exist in finite amounts, payment of lease royalties is associated with a diminution in the value of the lessor's mineral interest. This diminution in value is recognized in the tax code by means of the depletion allowance, which permits the mineral lessor to recover the value of the resources exhausted over the term of production. *Commissioner v. Southwest Exploration Co.*, 350 U.S. 308, 312 (1956); *Anderson*, 310 U.S. at 408.

The theory that a mineral lease represents only a license to seek and capture minerals fails to take account of the economic reality that payments under the lease are tied to actual production and that no royalties are paid under the lease if nothing is produced. However, even under the license theory, the lessee of a productive mineral lease, in consideration of royalty payments, ultimately does acquire ownership of minerals in which the lessor previously held an interest. *See J.M. Huber*, 367 F.2d at 114; *Lilly v. Conservation Commissioner of Louisiana*, 29 F. Supp. 892, 897 (E.D. La. 1939). Thus, the economic consequence of production under a mineral lease is a reduction in the value of the lessor's mineral interest through conversion of this interest into a cash asset or an in-kind royalty payment. This situation is distinguishable from a lease of property by which income is produced through exploitation of a renewable resource, *e.g.*, rental of land for grazing or planting. In the case of a mineral lease, the disposition of a nonrenewable resource and the direct connection between royalty payments and production indicates that production under such a lease must be considered a conversion of the form of assets and thus a sale of property for purposes of the pension statutes.

Regarding equitable treatment of landowners who exploit their holdings by different means, we believe the expendable nature of mineral interests distinguishes mineral lease proceeds from the rental income of other landowners. It is the distinction between renewable and non-renewable resources which is of significance rather than any distinction between surface and subsurface estates. Further, any seeming unfairness in the receipt of mineral royalties by a claimant for need-based pension benefits is ameliorated by the net-worth limitation of the pension law, discussed *infra*.

Under the tax statutes, proceeds of mineral leases are viewed not as the proceeds of a sale, but as income of the lessor. However, treatment of mineral lease transactions for purposes of the tax statutes is closely tied to the purposes and structure of those statutes and is of limited relevance to interpretation of laws governing provision of veterans' benefits. *See, e.g., Harmel*, 287 U.S. at 108; *Stratton's Independence, Ltd. v. Howbert*, 231 U.S. 399, 414-18 (1913). Further, the tax treatment of oil royalties is accorded in recognition of the generous depletion allowance available under the tax code. *Southwest Exploration*, 350 U.S. at 312; *Anderson*, 310 U.S. at 408. If mineral royalties were treated as income for VA pension purposes, it is unlikely a comparable allowance for the value of depleted assets could be provided under the veterans' benefit statutes. *See* 67 Op. Sol. 416 (1943) (depreciation could not be deducted from rental income). As with the tax code, the relevance of treatment of mineral lease transactions under the Natural Gas Act is limited by the particular terms and objectives of the statute at issue. *See, e.g., Mobil Oil*, 463 F.2d at 259-62.

The District Counsel's two opinions on this subject also conclude that bonus payments and delay rentals received in connection with a mineral lease must be considered income of the lessor for pension purposes. Bonus payments represent the initial consideration paid a lessor as inducement to enter a mineral lease. *Hasty v. McKnight*, 460 S.W.2d 949, 952 (Tex. Civ. App. 1970). Such payments are retained by the lessor regardless of whether minerals are ultimately produced. *Harmel*, 287 U.S. at 112. Delay rentals are sums paid by a lessee for the privilege of delaying development of mineral resources, *Davis v. Hardman*, 146 W. Va. 82, 133 S.E.2d 77, 81 (1963); *Millette v. Phillips Petroleum Co.*, 209 Miss. 687, 48 So. 2d 344, 348 (1950), and, in contrast to royalties, are not associated with production of minerals. *Davis*, 133 S.E.2d at 81. As neither bonuses nor delay rentals are related to production, such payments do not represent a conversion of assets and do not fall within the sale-of-property exclusion of the pension laws. They must therefore be considered income of the claimant.

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Although we have concluded that mineral lease royalty payments should be excluded from income under section 503, we emphasize that such payments are relevant to calculation of the corpus of a claimant's estate for purposes of the net worth limitation in the pension statutes. Sections 522(a) and 543 of U.S. Code title 38 provide that pension shall be denied or discontinued when the corpus of the claimant's estate is such that under all the circumstances it is reasonable that some part of the corpus be consumed for the claimant's maintenance. *See also* 38 C.F.R. § 3.274. Similar provisions were included in the corresponding sections of the section 306 pension statutes. *See also* 38 C.F.R. § 3.252(b).

In establishing the sale-of-property exception, Congress contemplated that sale receipts would be considered part of the claimant's net estate and could have the effect of barring eligibility if the estate so comprised fell within the terms of the net worth limitation. Letter of Chairman of HCVA, *supra;* Statement of Senator Keating, *supra;* Statement of Francis W. Stover, Director, National Legislative Service, Veterans of Foreign Wars, before the Senate Committee on Finance, August 19, 1964. Congress further recognized that a sale of property could affect the liquidity of the claimant's estate, rendering additional sums available for the claimant's support. Letter of the Chairman, HCVA, *supra.*

When the Veterans Administration issued regulations to implement the sale-of-property exception, it also recognized that sale proceeds could convert a claimant's estate to liquid assets which could reasonably be expected to be used for the claimant's support. Transmittal Sheet 331, p. vi, November 4, 1964. The Agency concluded that when a sale of property is reported, a new determination of net worth is required. *Id.* Provisions governing evaluation of net worth in both improved and section 306 pension regulations require consideration of whether property can be readily converted into cash at no substantial sacrifice. 38 C.F.R. §§3.275(d) and 3.263(d). The liquidity of assets derived from a mineral lease would be of significance in determining whether a portion of a claimant's estate could reasonably be considered available for the claimant's support.

Based on the foregoing, the District Counsel's opinions dated March 23, 1978, and April 26, 1985, are correct in concluding that mineral lease royalties must be considered profits from the sale of property for pension purposes, unless generated in the course of operating a business. These opinions are also accurate in stating that bonus payments and delay rentals under such leases are to be considered income of the claimant. Thus, these opinions need not be modified or withdrawn. As the conclusion that royalties constitute profits from the sale of property is based on our interpretation of the requirements of 38 U.S.C. § 503, we are without authority to modify the treatment of such payments by regulatory amendment.

HELD: Mineral lease royalties must be considered proceeds of the sale of property and are properly excludable from income for pension purposes. However, such payments are relevant to evaluation of the corpus of a claimant's estate for purposes of the net worth limitation in the pension statutes. Also, bonus payments and delay rentals received in connection with a mineral lease must be considered income of the lessor for pension purposes.

Donald L. Ivers

DONALD L. IVERS
General Counsel

NOTE: This opinion was released in the form of a letter to the VA District Counsel, Waco, on June 19, 1985.

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